Agenda

Regular Meeting of the Public Works and Utilities Committee
March 17, 2025 at 5:00 PM
Council Chambers, City Hall
200 Lincoln Avenue

Procedures for Public Works and Utilities Committee Meeting

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Consent Agenda
5. Public Comment
6. Presentations
7. Action Items: Consent Agenda

   a. Request for Approval of the January 21, 2025, Public Works and Utilities Committee Meeting Minutes. (Jesse Roach, Interim Public Utilities Director; jdroach@santafenm.gov)

   Committee Review:
   Public Works and Utilities Committee: 03/17/2025

   b. Request for Approval of a General Services Contract with Keers Facility Services LLC in the Total Amount of $1,000,000 for On-Call Remediation Services through December 31, 2028. (Caryn Grosse, Public Works Project Manager III; clgrosse@santafenm.gov)

   Committee Review:
   Public Works and Utilities Committee: 03/17/2025
   Finance Committee: 03/24/2025
   Governing Body: 03/26/2025

   c. Request for Approval of Professional Services Agreement with HDR Engineering, Inc. in the Total Amount of $339,388 Including NMGRT for Engineering Design Services for a Four-Year Term. (Paul F. Heerbrant, PE Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $339,338 from Wastewater Enterprise Fund to Wastewater WIP Design.

Committee Review:
Public Works and Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
Governing Body: 03/26/2025

d. Request for Approval of Amendment No. 1 to Professional Services Agreement Item #24-0505 with WH Pacific Inc to Reflect Company's Name Change to NV5 Inc. (Romella Glorioso-Moss, Complete Streets Capital Projects Manager, rsglorioso-moss@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
Governing Body: 03/26/2025

e. Request for Approval of a Construction Contract with Alive Electric, Inc. in the Total Amount of $600,000 for On Call General Electrical Services for a Four-Year Term. (Fred Heerbrandt, Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $649,125 from the Wastewater Enterprise Fund to WIP Construction.

Committee Review:
Public Works and Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
Governing Body: 03/26/2025

f. Request for Approval of Amendment No. 3 to Price Agreement Item #21-0378 with Sub Surface Contracting, Inc. to Increase Compensation by $542,187.50 for a New Total Amount of $2,168,751 Including NMGRT for On Call City-Wide Water Utility Construction and Repair. (Bill Huey, Engineer, bchuey@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
Governing Body: 03/26/2025

g. Request for Approval of Amendment No. 1 to Price Agreement Item #21-0378

with A.A.C. Construction, LLC to Increase Compensation by $542,187.50 for a New Total Amount of $1,626,562.50 Including NMGRT for On Call City-Wide Water Utility Construction and Repair. (Bill Huey, Engineer, bchuey@santafenm.gov).

Committee Review:
Public Works and Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
Governing Body: 03/26/2025

h. Request for Approval of General Services Contract with Newterra Corporation, Inc., in the Amount of $249,984 for the Rental of Six Aerators for a Six-Month Term. (Michael Dozier, Wastewater Management Division Director; mldozier@santafenm.gov and LeRoy Alvarado, Wastewater Division Operations Supervisor; lmalvarado@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $249,984 from Wastewater Management Enterprise Fund to Wastewater Capital Projects, WIP Construction.

Committee Review:
Public Works and Utilities Committee 03/17/2025
Finance Committee: 03/24/2025
Governing Body: 03/26/2025

i. CONSIDERATION OF BILL NO. 2025-4. ADOPTION OF ORDINANCE NO. 2025-____. (Councilor Carol Romero-Wirth, Councilor Michael Garcia, Councilor Amanda Chavez)
A Bill Amending Ordinance No. 2024-6 to Approve Three Individual Loan Agreements with the New Mexico Environment Department to be Paid with Revenues from Each System, Respectively: (1) a Wastewater Project Loan Agreement; (2) a Water Project Loan Agreement; and (3) a Solid Waste Collection Project Loan Agreement; Incorporating Defections and Covenants Relating to Wastewater, Water, and Waste-Water System Debt Obligations in Each Loan Agreement, Respectively, by Reference Herein; Ratifying Prior Action Consistent with the Provisions Hereof; and Repealing Prior Action Inconsistent with the Provisions Hereof, but Only to the Extent of Such Inconsistency. (Emily Oster, Finance Director; ekoster@santafenm.gov)

Committee Review:
Governing Body (Introduced): 02/26/2025
Governing Body (Public Comment): 03/12/2025
Public Works and Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
~~Governing Body: 03/26/2025~~ (Schedule amended per Article IV(A)(4))
Governing Body: 04/09/2025

j. CONSIDERATION OF BILL NO. 2025-7. ADOPTION OF ORDINANCE NO. 2025-____. (Mayor Alan Webber)
A Bill Regarding Annual Budgets Including Multi-Year Appropriations; Amending Section 11-2.1 to Conform with the City's Charter; Establish Multi-

Year Appropriations for Capital Outlay, Grant-Funded Projects, and "Special Appropriations"; and, Effective December 31, 2025, Amending Section 11-2.4 to Sunset the Finance Director's Budget Amendment Authority to Carry Over Certain Unexpended Appropriations Into the Next Fiscal Year. (Alexis Lotero, Assistant Finance Director; aclotero@santafenm.gov)

Committee Review:
Governing Body (Introduced): 02/26/2025
Governing Body (Public Comment): 03/12/2025
Public Works and Utilities Committee: 03/17/2025
Finance Committee: 03/24/2025
Governing Body: (Public Hearing): 04/09/2025

8. Action Items: Discussion Agenda

   a. CONSIDERATION OF RESOLUTION NO.2025-____(Councilor Amanda Chavez)
   A Resolution Authorizing Representatives and Agents for an Agreement with the New Mexico Environment Department, Regarding Agreement Number SAP-I2457-GF, to Plan, Design, and Construct Improvements on Jemez Road, Including a Sewer Line South of Airport Road, to Improve Residential Septic Systems. (Paul F. Heerbrant, PE Engineer Supervisor: pfheerbrandt@santafenm.gov)

   Committee Review:
   Governing Body (Introduced): 03/12/2025
   Public Works and Utilities Committee: 03/17/2025
   Finance Committee: 03/24/2025
   Governing Body: 03/26/2025

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.

Regular Meeting of the Public Works and Utilities Committee
January 21, 2025 at 5:00 PM
Council Chambers, City Hall
200 Lincoln Avenue
MINUTES

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1. Call to Order

The Public Works & Utilities Committee was called to order by Acting Chair Carol Romero-Wirth at 5:02 PM, on Tuesday, January 21, 2025, in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

2. Roll Call

MEMBERS PRESENT
District 3 Councilor Lee Garcia
District 4 Councilor Amanda Chavez [attended virtually]
District 2 Councilor Romero-Wirth, Acting Chair

MEMBERS EXCUSED
District 2 Councilor Michael Garcia
District 1 Councilor Alma Castro

OTHER PARTICIPANTS ATTENDING
Regina Wheeler, Public Works Department Director

3. Approval of Agenda

Councilor Carol Romero-Wirth moved, seconded by Councilor Lee Garcia, to approve the Agenda. The motion was approved unanimously by voice vote.

4. Approval of Consent Agenda

Councilor Carol Romero-Wirth moved, seconded by Councilor Lee Garcia, to approve the Consent Agenda. The motion was approved unanimously by voice vote.

5. Public Comment

There were no Public Comments.

6. Presentations

There were no presentations held.

7. Action Items: Consent Agenda

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve the Consent Agenda.

VOTE The motion on a voice vote was approved unanimously.

a. Request for Approval of the January 6, 2025, Public Works & Utilities Committee Meeting Minutes. (Jonna Stack, Project Administrator; jlstack@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 01/21/2024

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item a.

VOTE The motion on a voice vote was approved unanimously.

b. Request for Approval of a Construction Contract with GM Emulsion LLC for the Construction of S100770 Tierra Contenta Trail Extension - Phase A in the Total Amount of $1,111,917 Excluding NMGRT for a Two-Year Term. (Romella Glorioso-Moss, Complete Streets Capital Projects Manager; rsglorioso-moss@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item b.

VOTE The motion on a voice vote was approved unanimously.

c. Request for Approval to Accept the New Mexico Department of Transportation Aviation Division Grant SAF-25-02 in the Amount of $540,000 for the North Apron Reconstruction Project for a Two-Year Term. (James Harris, Airport Manager; jcharris@santafenm.gov; Kelly Bynon, Administrative Manager; kabynon@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $600,000 to Increase WIP Design and WIP Construction Using $540,000 from the New Mexico Department of Transportation Aviation Division Funding and $60,000 from the Airport Fund Balance for the North Apron Reconstruction Project.

Committee Review:
Public Works & Utilities Committee: 01/21/2025

Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item c.

VOTE The motion on a voice vote was approved unanimously.

d. Request for Approval of a Budget Amendment Resolution (BAR) to Allocate New Mexico Department of Transportation Grant Funding in the Total Amount of $95,000 to FY25 Parks and Open Space Revenue and Operating Budget to Support Litter Control and Beautification Efforts. (Jason T. Sharp, Park Ranger Superintendent; jtsharp@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item d.

VOTE The motion on a voice vote was approved unanimously.

e. Request for Approval of a Construction Contract with Mountain West Golfscapes, Inc. to Repair the Irrigation Supply and Ornamental Ponds at the Marty Sanchez Golf Course and Municipal Recreation Sports Complex for Compliance with a Corrective Action Plan in the Total Amount of $2,213,247.69 Excluding NMGRT for a Three-Year Term. (Scott A. Overlie, PW Project Manager; saoverlie@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item e.

VOTE The motion on a voice vote was approved unanimously.

f. Request for Approval of a Budget Amendment Resolution (BAR) to Transfer Customer River Fund Donations and a Water Fund Match in the Total Amount of $239,594 to Santa Fe River Fund WIP Construction in Public Works Per Ordinance No. 2013-9 the Voluntary River Conservation Fund. (Zoe Isaacson, River and Watershed Manager; zrisaacson@santafenm.gov)

Committee Review:
Public Works and Utilities Committee: 01/21/2025

Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item f.

VOTE The motion on a voice vote was approved unanimously.

g. Request for Approval to Accept the New Mexico Department of Transportation Aviation Division Grant SAF-25-03 for the Reconstruction of the Terminal Apron in the Amount of $1,234,923 for a Two-Year Term. (James Harris, Airport Manager, jcharris@santafenm.gov; Kelly Bynon, Administrative Manager; kabynon@santafenm.gov)

1. Request For Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $1,372,167 to Increase WIP Design and WIP Construction using New Mexico Department of Transportation Aviation Division Funding for the Reconstruction of the Terminal Apron.

Committee Review:
Public Works & Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item g.

VOTE The motion on a voice vote was approved unanimously.

h. Request for Approval of Goods and Services Contract with Vertosoft, LLC for the Purchase of Asset Management Software and Implementation Services in the Total Amount Not to Exceed $1,913,591.72, Including NMGRT, for a Five-Year Term. (Taylor Jurgens, Engineer; trjurgens@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) Increasing FY25 Public Utilities Admin Software by $257,922 and Decreasing Available Water Budgets in the Total Amount of $146,694 and Wastewater Enterprise Cash Balance by $111,228.

2. Request for Approval of a Budget Amendment Resolution (BAR) Increasing FY25 Public Utilities Admin Software Purchases by $237,707 and Decreasing Public Works Budgets in the Total Amount of $237,707.

Committee Review:
Public Works and Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor

Lee Garcia, to approve Item h.

VOTE The motion on a voice vote was approved unanimously.

i. Request for Approval of New Mexico Environment Department Capital Appropriation Project Agreement in the Total Amount of $400,000 for the Jemez Road Sewer Line Extension with a Reversion Date of June 30, 2026. (P. Fred Heerbrandt, Wastewater Division Engineering Supervisor; pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $400,000 from the Capital Appropriation Grant to FY25 Revenue and Expenses for the Jemez Road Sewer Line Project.

Committee Review:
Public Works and Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item i.

VOTE The motion on a voice vote was approved unanimously.

j. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $200,000 from FY25 Complete Streets One Time Capital and Operating Funds to CIP WIP Construction for the St. Michaels Drive Intersection Improvements. (Jennifer Morrow, Complete Streets Division Director; jlmorrow@santafenm.gov)

Committee Review:
Public Works & Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item j.

VOTE The motion on a voice vote was approved unanimously.

k. CONSIDERATION OF RESOLUTION NO. 2025_____. (Councilor Amanda Chavez and Councilor Michael Garcia)
A Resolution Authorizing Representatives and Agents for New Mexico Department of Finance and Administration, Appropriation ID Number I3321, New Mexico Department of Transportation Control Number C5243321, to Acquire Rights of Way for and to Plan, Design, and Construct a Pedestrian Underpass on Saint Michael's Drive. (Regina Wheeler, Public Works Director; rawheeler@santafenm.gov)

Committee Review:
Governing Body (Introduced): 01/15/2025
Public Works and Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item k.

VOTE The motion on a voice vote was approved unanimously.

l. CONSIDERATION OF RESOLUTION 2025___. (Mayor Alan Webber)
A Resolution Accepting a Grant from the Que Linda Beautification Program Administered by the New Mexico Department of Transportation; Entering into a Grant Agreement for a Total Amount of $95,000.00, Term Ending June 30, 2025; Identifying the City Manger or City Manager's Designee as the Signatory for the Agreement. (Jason Sharp, Santa Fe Parks Superintendent; jtsharp@santafenm.gov)

Committee Review:
Governing Body (Introduced): 01/15/2025
Public Works and Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item l.

VOTE The motion on a voice vote was approved unanimously.

m. CONSIDERATION OF RESOLUTION 2025____. (Councilor Amanda Chavez)
A Resolution Authorizing Representatives and Agents for New Mexico Department of Finance and Administration, Appropriation ID Number G3165, New Mexico Department of Transportation Control Number C5223165, to Plan, Design, Construct, Landscape, and Make Phase I Improvements to Medians on Arterial and Collector Roads for the City of Santa Fe in Santa Fe County. (Regina Wheeler, Public Works Director; rawheeler@santafe.gov)

Committee Review:
Governing Body (Introduced): 01/15/2025
Public Works and Utilities Committee: 01/21/2025
Finance Committee: 01/27/2025
Governing Body: 01/29/2025

MOTION A motion was made by Councilor Amanda Chavez, seconded by Councilor Lee Garcia, to approve Item m.

VOTE The motion on a voice vote was approved unanimously.

8. Action Items: Discussion Agenda

There were no Action Items discussed.

9. Executive Session

There was no Executive Session held.

10. Matters from Staff

There were no matters from staff presented.

11. Matters from the Committee

There were no matters from the Committee presented.

12. Matters from the Chair

There were no matters from the Acting Chair presented.

13. Next Meeting:

February 3, 2024

14. Adjourn

The Public Works & Utilities Committee meeting was adjourned at 5:04 PM.

Committee Liaison

Jonna Leigh Stack

Chair

Amanda Chavez

Amanda Chavez (Mar 6, 2025 15:43 MST)

CITY OF SANTA FE

Date: February 18, 2025

To: Governing Body

From: Caryn Grosse, PMP, Public Works Project Manager III

Via: Regina Wheeler, Public Works Department Director RW (Feb 21, 2025 12:13 MST)
Sam Burnett, Facilities Division Director JOHN BURNETT (Feb 19, 2025 08:53 MST)

Subject: City-Wide On-Call Remediation Services Contract

Vendor Name: Keers Facility Services LLC

Vendor Number: 7887

ACTION:
Request for Approval of a General Services Contract with Keers Facility Services LLC in the Total Amount of $1,000,000 Excluding NMGRT for On-Call Remediation Services with Term Ending December 31, 2028. (Caryn Grosse, Public Works Project Manager III, cgrosse@santafenm.gov).

CONTRACT NUMBER:
The FY25 Munis contract number is 3250239.

BACKGROUND AND SUMMARY:
The Public Works Department Facilities Division uses on-call services to augment the skills, licensure, and capacity of staff to address facility issues and emergencies in a timely, safe, and compliant manner. The Facilities Division typically maintains on-call contracts for general contracting, mechanical, electrical, plumbing, roofing, remediation, and landscaping services.

Keers Facility Services LLC specializes in the removal and disposal of various hazardous and/or contaminated materials as well as inspections, sampling, analysis and remediation, restoration, and related services. This on-call contract with Keers is critical to the Facilities Division's ability to respond to emergency situations in a timely manner, prevent major damage to City facilities, and to mitigate future damage. Keers has previously provided services throughout the City and has proven to be cost effective, reliable, and consistently capable of providing high quality results.

On-call contracts are not a guarantee of payment. These contracts are only used, and purchase orders issued, as needs arise and funding is available. The $1,000,000 (excluding NMGRT) maximum for this contract is estimated at $250,000 each year, over the next four years, based on historical and anticipated needs.

ATTACHMENTS:
General Services Contract
Proposal
CES Contract # 2024-13-C121-ALL
Certificate of Insurance
CPO Determination
Horizons Declination

PROCUREMENT METHOD:
The procurement method used was NMSA 1978, Section 13-1-135; Cooperative Educational Services (CES) contract # 2024-13-C121-ALL, which expires on December 21, 2027.

Chief Procurement Officer (CPS)/Designee: _____ Date: _____
CPO Comment/Exceptions: _____

FUNDING SOURCE:
Funding will be provided on a project-by-project basis.
Fund Name/Number: various
Munis Org Name/Number: various
Munis Object Name/Number: various

Budget Officer/Designee: Andy Hopkins Date: _____
Budget Officer Comment/Exceptions: _____

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

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: Sam approved memo 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: _____ Date: _____
Comment/Exceptions: _____

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

Department Contract Administrator Contact Info:
Elizabeth L. Kahahane (elkahahane@santafenm.gov)

Item#_____
Munis Contract#: 3250239
Coop #: 2024-13-C121-ALL

CITY OF SANTA FE
GENERAL SERVICES CONTRACT

On-Call Remediation Services

THIS CONTRACT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **Keers Facility Services LLC.** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

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

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

2. **Scope of Work**

A. The Contractor shall perform the following work based on Contractor's proposal, dated August 19, 2024, marked as "Exhibit A," attached hereto and made a part thereof:

1. Removal and disposal of asbestos hazardous and/or contaminated good and materials, inspection/re-inspection, sampling, analysis and remediation, restoration and related services.
2. Removal of hazardous materials, including asbestos containing building materials, toxic mold containing building materials, and biohazards including pigeon feces at various locations.
3. Engineering controlled removal methods to be utilized during remediation activities, as required by appropriate regulatory agencies.
4. All hazardous waste including asbestos waste will be disposed of in compliance with all Occupational Health and Safety Administration (OSHA), National Emission Standards for Hazardous Air Pollutants (NESHAP), Environmental Protection Agency (EPA), and Department of Transportation (DOT) Federal Regulations and any other applicable regulations.
5. Testing and engineering shall be performed as needed or required by appropriate regulatory agencies.
6. Miscellaneous trash clean-up

B. **Task Orders**

Once a need is identified, the City 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.

C. **Change Orders**

1. Changes. The Contractor may only make changes or revisions within the Scope of Work of each Task Order after receipt of written approval by the City's Project 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:

   i) Deliverable requirements, as outlined in the Task Order;
   ii) Due date of any Deliverable, as outlined in the Task Order;
   iii) Compensation of any Deliverable, as outlined in the Task Order;
   iv) Contract compensation, as outlined in Article 2; or
   v) Contract termination, as outlined in Article 4.

1. Change Request Process. In the event that circumstances warrant a change to accomplish the work defined in a Task Order as described above, a Change Request shall be submitted that meets the following criteria:

   i) The Project Administrator shall draft a written Change Request for review and approval by the Project 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.

   ii) When the Project Manager finds that the Change Request is appropriate for the project and complies with the requirements above, the Project Manager will forward the draft to the Contractor. Within five (5) business days, the Contractor will review the Change Request and inform the Project Manager in writing of whether the Change Order will require any changes to the project schedule and/or price due to, e.g., equipment availability or additional materials.

   iii) The Project Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of Contractor's written statement about whether the schedule or price will be affected. All decisions made by the Project Manager are final. Change Requests, once approved, become a part of the Task Order, and become binding as a part of the original Task Order. If the Change Order results in a revised project schedule or cost, the revised documents shall be attached to the Change Order and incorporated into the original Task Order.

3. **Compensation**

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

Deliverable item:	U/I (unit of issue)	Price
01 On-Call Remediation Services		$1,000,000.00

The total compensation under this Contract shall not exceed $1,000,000.00 excluding New Mexico gross receipts tax.

4. **Payment Provisions**

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

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

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

5. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **December 31, 2028.** 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.

6. **Default and Force Majeure**

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

were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. Grounds. The City may terminate this 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 17, "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.*

8. **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 Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a

result of this Contract. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

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

11. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this 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.

12. **Non-Collusion**

In signing this Contract, 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.

13. **Inspection of Plant**

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

14. **Commercial Warranty**

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

15. **Condition of Proposed Items**

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

16. **Records and Audit**

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

17. **Appropriations**

The terms of this Contract, and any orders placed under it, 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 legislature, this Contract, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the 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.

18. **Release**

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

19. **Confidentiality**

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

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this 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. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this 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 Paragraph 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 Paragraph 20 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 Paragraph 20 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.

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

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

22. **Scope of Contract; 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.

Cooperative 13-1-135

This Contract is issued against the Cooperative Educational Services Master Agreement 2024-13-C121-ALL, established and maintained by CES, and through this language hereby incorporates this agreement by reference and is included in the order of precedence.

The provisions in Exhibit A, specifically those at pages 2, 5, and 6, are incorporated herein except to the extent that they conflict with the terms of this contract or CES Master Agreement 2024-13-C121-ALL.

23. **Notice**

The Procurement Code, 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 bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this 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.

25. **Indemnification**

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

The City does not indemnify Contractor.

26. **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.

27. **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.

28. **Limitation of Liability**

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

29. **Incorporation by Reference and Precedence**

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

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

30. **Workers' Compensation**

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

31. **Inspection**

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

32. **Inspection of Services**

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

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

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

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

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

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

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

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

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

(2) terminate the contract for default.

33. **Insurance**

If the services contemplated under this 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.

34. **Impracticality of Performance**

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

35. **Invalid Term or Condition**

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

36. **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.

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

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

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

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

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

38. **Survival**

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

39. **Disclosure Regarding Responsibility**

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

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

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

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

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

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

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

The City may, without cause, order the Contractor, in writing, to suspend, delay or

interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Contract.

41. **Notification**

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

To the City:
Caryn Grosse
Project Administrator Sr, PMP
City of Santa Fe/Public Works
2651 Siringo Road, Blg E/ PO Box 909
Santa Fe, NM 87504
clgrosse@santafenm.gov

To the Contractor:
Chris Lara
Service Coordinator
Keers Facility Services LLC
5904 Florence Ave NE
Albuquerque, NM 87113
clara@keers.com

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

42. **Succession**

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

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, CITY MAYOR

DATE:_____

CONTRACTOR:
Keers Facility Services LLC

Cailyn Kilcup
Cailyn Kilcup (Oct 29, 2024 10:18 MDT)
CAILYN KILCUP
MANAGING MEMBER

DATE: Oct 29, 2024

NMBTIN # 03-383880-00-1

ATTEST:

_____
GERALYN CARDENAS, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Oct 29, 2024 10:27 MDT)
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
_____
EMILY OSTER, FINANCE DIRECTOR

Proposal/Service Agreement

EXHIBIT A

Project Title: CES COSF On Call Contract Miscellaneous Clean Up 2024 to 2028
Proposal Number: N/A
Date: August 19, 2024

Submitted to:	MR. SAM BURNETT	Project Name:	COSF ON CALL CONTRACT 2024-2028
Client:	CITY OF SANTA, FE PUBLIC WORKS	Project Location:	SANTA FE, NM 87501
Mailing Address:	2651 SIRINGO RD. # E	Telephone/Fax:	1-505-955-5938
City/State/Zip:	SANTA FE, NM 87505	Email Address:	JSBURNETT@SANTAFENM.GOV

SCOPE OF WORK

The proposed work consists of the following:

Type of Services	☑ Asbestos Abatement Services ☑ Site Remediation Services ☑ Lead Abatement Services ☑ Industrial Decontamination Services ☑ Toxic Mold Remediation ☑ Asbestos-LBP-C&D Waste Disposal ☑ Biohazard Decontamination ☑ Other: Sampling Building Materials ☑ Miscellaneous Clean up
Scope of Work Per CES Contract No. 2024-13-C121-All	**1) Removal and Disposal of Asbestos Hazardous and or Contaminated Goods and Materials, Inspection/Re-Inspection, Sampling, analysis and Remediation, restoration and Related Services.** **2) Removal of hazardous materials, including asbestos containing building materials, toxic mold containing building materials, and biohazards including pigeon feces at various locations.** **3) Engineering controlled removal methods to be utilized during remediation activities, as required by appropriate regulatory agencies.** **4) All hazardous waste, including asbestos waste will be disposed of in compliance with all Occupational Safety and Health Administration (OSHA), National Emission Standards for Hazardous Air Pollutants (NESHAP), Environmental Protection Agency (EPA), and Department of Transportation (DOT) Federal Regulations and any other applicable regulations.** **5) Testing and engineering shall be performed as needed or required by appropriate regulatory agencies.** **6) Miscellaneous Trash Clean Up.**
Project Locations	Various locations throughout the City of Santa Fe, NM.
Specific Project Exclusions	Replacement of materials removed.
Proposed Time	To be determined.
Disposal Facility	To be determined.
Other Details	City of Santa Fe must supply utilities (electrical power source) as necessary. • Keers can provide restoration service by employing a subcontractor and provide Building Demolition Services. • Keers provides Asbestos-Lead Based Paint Testing and Full Reports CES Contract Number 24-13-C111-All. • Mold project can be scheduled with a week of receiving a purchase order. • Asbestos projects may take up to 12 working days to schedule after receiving a purchase order. • An Asbestos Neshap may have to be filed if the asbestos quantities are over 160sf or 260lf.

TECHNICAL PROCEDURES

In completing the scope of work, all technical procedures employed will be in accordance with the Keers' proprietary QualPRO® Quality system. Our 193-page QualPRO manual consists of work practice procedures, checklists, and forms that our employees and supervisors use to provide you with a quality, end result in compliance with applicable EPA, OSHA, USHUD, NMED, TDH, and DOT governmental regulations.

WASTE MANAGEMENT

Unless otherwise indicated all asbestos-containing waste will be permanently disposed of at the Special Waste Disposal's landfill (EPA permit No. SWM-013035(SP). Hydrocarbon contaminated soils/water will be treated at the Special Waste Disposal's Hydrocarbon Landfarm Facility (NMED permit No. DP-1012). Both facilities are located in Torrance County, New Mexico.

LIABILITY PROTECTION

This proposal includes $1,000,000 of hazardous substances specific general liability, auto and workmen compensation insurances, written with A-Rated insurance carriers.

This proposal includes use of the Keers proprietary project documentation system **ProDOC™**. This system consists of: regulatory notifications, daily logs, visual and final inspection reports, air monitoring reports, manometer logs, final inspection report, and waste manifests. **ProDOC™** documents important regulatory/liability information for the protection of the facility owner.

REGULATORY COMPLIANCE

This project is subject to one or more of the following Federal governmental regulation or equivalent delegated State regulation: OSHA (29 CFR 1910 and 1926), EPA (40 CFR 260-299, 40 CFR 763, Subparts E and G), National Emission Standards for Hazardous Air Pollutants (NESHAPS 40 CFR 61, Subpart M), and DOT (49 CFR 100-177) and 24 CFR Part 35. This Proposal/Agreement is in compliance with the applicable regulatory sections.

PROJECT QUALITY/SAFETY ASSURANCE

This project proposal includes our 107-point QA/QC (health, safety, quality and regulatory Control) job site inspection program.

IMPORTANT NOTICE REGARDING REMOVAL OF ASBESTOS FLOORING

Our services are intended to remove asbestos-containing materials only. If flooring products are re-installed, it is the installer's responsibility to prepare the floor for reinstallation according to manufacture's recommendations and requirements. Keers will not be responsible for floor preparation.

IMPORTANT REMINDER: REGULATORY NOTIFICATIONS

Asbestos

On most asbestos abatement projects, a notice of intent to remove asbestos must be filed with the local NESHAPS regulatory authorities, 10 working days before work can begin. In many locations, local regulatory agencies bill the owner a fee based on the number of asbestos removal units stated on the notification. If you need help estimating what this fee is in your area, please ask your local Keers' Service Coordinator.

Toxic Mold

On some mold remediation projects, a notice of intent to remediate mold must be filed with the local regulatory authorities, (Texas: 5 working days.)

Lead

On some lead abatement projects, a notice of intent to remove lead must be filed with the local or national regulatory authorities, (Texas: 7 working days, USHUD: 5 business days.)

Proposal/Service Agreement

Project Title: CES COSF On Call Contract Miscellaneous Clean Up 2024 to 2028
Proposal Number: N/A
Date: August 19, 2024

Submitted to:	MR. SAM BURNETT	Project Name:	COSF ON CALL CONTRACT 2024-2028
Client:	CITY OF SANTA, FE PUBLIC WORKS	Project Location:	SANTA FE, NM 87501
Mailing Address:	2651 SIRINGO RD. # E	Telephone/Fax:	1-505-955-5938
City/State/Zip:	SANTA FE, NM 87505	Email Address:	JSBURNETT@SANTAFENM.GOV

PRICING: CES Contract No. 2024-13-C121-All Non-State Wage Rates

MOBILIZATION FEE PER PROJECT	$ 8%
COORDINATOR/ESTIMATOR	$ 70.00 PER HOUR
ENVIRONMENTAL SUPERVISORS/PROJECT MANAGER	$ 60.00 PER HOUR
ENVIRONMENTAL WORKERS	$ 55.00 PER HOUR
ENVIRONMENTAL INSPECTOR INCLUDING ASBESTOS & MOLD FINAL AIR CLEARANCE SAMPLING & TESTING	$ 70.00 PER HOUR
COMPANY OWNED TRUCK $ 65.00 PER DAY	$ 65.00 PER DAY
COMPANY OWNED ENCLOSED TRAILER $ 95.00 PER DAY	$ 95.00 PER DAY
ASBESTOS WASTE DISPOSAL AND TRANSPORTATION	COST PLUS 25%
SPECIALTY EQUIPMENT- DUSTLESS BLASTING EQUIPMENT @ $ 325.00 PER DAY	$ 325.00 PER DAY
PERCENT OF MARK UP OF INVOICE	COST PLUS 25%
SUBCONTRACTORS	COST PLUS 25%
PERFORMANCE & PAYMENT BONDING WILL BE ADDED @ 3.0% TO PROJECTS OR PURCHASE ORDERS OVER $ 25,000.00	3.0%
PLEASE ADD NM GRT @ CURRENT RATE TO THE TOTAL PURCHASE ORDER AMOUNT	CURRENT NM GRT RATE
TOTAL CONTRACT AMOUNT NOT TO EXCEED ONE MILLION PER CALANDER YEAR UP TO 4 YEARS	$ 1,000,000.00

PRICING: CES Contract No. 2024-13-C121-All State Wage Rates

MOBILIZATION FEE PER PROJECT	$ 8%
COORDINATOR/ESTIMATOR	$ 75.00 PER HOUR
ENVIRONMENTAL SUPERVISORS/PROJECT MANAGER	$ 65.00 PER HOUR
ENVIRONMENTAL WORKERS	$ 60.00 PER HOUR
ENVIRONMENTAL INSPECTOR INCLUDING ASBESTOS & MOLD FINAL AIR CLEARANCE SAMPLING & TESTING	$ 80.00 PER HOUR
COMPANY OWNED TRUCK $ 65.00 PER DAY	$ 65.00 PER DAY
COMPANY OWNED ENCLOSED TRAILER $ 95.00 PER DAY	$ 95.00 PER DAY
ASBESTOS WASTE DISPOSAL AND TRANSPORTATION	COST PLUS 25%
SPECIALTY EQUIPMENT- DUSTLESS BLASTING EQUIPMENT @ $ 325.00 PER DAY	$ 325.00 PER DAY
PERCENT OF MARK UP OF INVOICE	COST PLUS 25%
SUBCONTRACTORS	COST PLUS 25%
PERFORMANCE & PAYMENT BONDING WILL BE ADDED @ 3.0% TO PROJECTS OR PURCHASE ORDERS OVER $ 25,000.00	3.0%
PLEASE ADD NM GRT @ CURRENT RATE TO THE TOTAL PURCHASE ORDER AMOUNT	CURRENT NM GRT RATE
TOTAL CONTRACT AMOUNT NOT TO EXCEED ONE MILLION PER CALANDER YEAR UP TO 4 YEARS	$ 1,000,000.00

Note: We reserve the right to withdraw this proposal if not accepted within 30 days.

Keers Facility Services, LLC Signature: _____ Date: **08/19/2020**
Name/Title: Christopher Lara, Service Coordinator, E-mail: **clara@keers.com**

Limitation of Authority: Proposals over $50,000 require Keers corporate review and signature by an officer and approval to be valid.
Reviewed and approved by: _____ Date: _____
Name/Title

CUSTOMER ACCEPTANCE

The above proposals (pages 1-6) are hereby accepted. You are authorized to complete the work as described.

Client Signature: _____

Name/Title: _____ **Date:** _____

Please Return to:
Keers Facility Services, LLC
5904 Florence Ave. NE, Albuquerque, NM 87113
Telephone: (505) 823-9006 or Toll Free 800-327-8642
Fax: (505) 823-2766 or Above Email Address

Service Center Located in El Paso, Texas

Proposal/Service Agreement

Project Title: CES COSF On Call Contract Miscellaneous Clean Up 2024 to 2028
Proposal Number: N/A
Date: August 19, 2024

General Conditions

Scope of Work

Keers Facility Services, LLC (Contractor) agrees to furnish necessary labor, materials, supplies, equipment and tools to perform and complete in a professional workmanlike manner, the services described in the proposal.

Payment

100% upon completion of scope of work unless credit arrangements have been made, or work duration is longer than one (1) month. Then the contractor will submit invoices monthly, or as otherwise agreed, for completed portions of services or additional work authorized pursuant to Paragraph 5 herein. Client agrees to pay the invoiced amount within 20 days from date of invoice. Any payment not received by Contractor within 30 days shall be considered delinquent and the amounts due contractor shall accrue a late charge of 1 percent per month for each month from date of invoice. In the event any payment due Contractor under the terms of this Agreement is delinquent, Contractor may suspend all services until all delinquent payments have been received.

Standard of Care

a. While performing services under this agreement, Contractor shall exercise the degree of skill ordinarily exercised where performing the kind of services stated in the "Scope of Work".

b. Contractor assumes no responsibility for errors in public data utilized, statements from sources outside of Contractor, or developments resulting from situations outside the control of the contractor.

c. The standard of care set forth herein is the sole and exclusive standard of care that will be applied to measure Contractor's performance of the services or the creation of its work product.

There are no other representations or warranties made by Contractor. In particular, but not by way of limitation, Contractor makes no representation or warranty that the implementation or use of the recommendations, findings, conclusions, or final results produced as a result of performing the services will result in compliance with applicable law or provide a perfect result. Furthermore, with regard to microbial remediation, the contractor makes no warranties, claims, or guarantees that mold has been forever eliminated. It is possible that mold may return, unless the environment which supports mold growth is altered, which may or may not be possible, even given the best efforts of the contractor. Moreover, to the extent allowed by law, any and all implied representations or warranties arising out of the services are hereby expressly disclaimed and negated. IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

Time For Performance

The work will be completed within the calendar days as described in the scope of work, or as expeditiously as possible.
If the Contractor is delayed at any time in the progress of the work by any act or omission of the Client, or by its officers, directors, employees, agents and assigns ("Representatives"), or by any separate contractor employed by the Client, or by changes ordered in the work, or by labor dispute, fire, unusual delay in transportation, adverse weather conditions, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the owner pending arbitration, then the contract time shall be extended by agreement for such reasonable time as required.

Additional Work

The Client, without invalidating the agreement, may order changes in the work within the general scope of the agreement consisting of additions, deletions or revisions of the scope, cost of services and time being adjusted accordingly. All such changes in the work shall be authorized in writing. The cost or credit to the Client resulting from a change in the work shall be determined by one or more of the following: (1) by mutual agreement of either a fixed fee and/or unit price to be multiplied by the units worked in determining the total sum; (2) hourly rate per man hour multiplied by the man hours expended; or (3) by other mutually agreeable cost methods. If the outcome of the completed work indicates that additional or different work is required: the Contractor will notify the Client and will use his best professional judgment in assisting the Client in deciding how to proceed. The cost of services will be equitably adjusted by written change order or supplemental agreement between both parties.

Access, Approvals, Permits

Client shall arrange for access and make all provisions for Contractor to enter public and private property as required for Contractor to perform the specified services. Client shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approval and consent from others as may be necessary. Unless expressly stated in the proposal as the responsibility of contractor.

Client Provided Information

Work will not commence until the Contractor has received a duly executed copy of this contract. The Client shall direct its officers, directors, employees, subcontractors and agents to render reasonable assistance and to provide (promptly upon request) all necessary or appropriate data to the Contractor in connection with its performance under this agreement.

Any data furnished shall be furnished at the Client's expense, and the Contractor shall be entitled to rely upon its accuracy and completeness. The Client shall locate for the Contractor, and shall assume responsibility for the accuracy of his representations, as to the locations of all underground utilities, tanks, structures, or other installations, unless the express responsibility of the Contractor as stated in the "Scope of Work".

Safety

In an emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation and/or extension of time claimed by the Contractor on account of emergency work shall be determined as set forth, under the Additional Work section.

Hazardous Substances

Nothing herein shall be construed or interpreted as requiring Contractor to assume the status of a generator of any hazardous substances or hazardous materials, as those terms are defined under any applicable federal, state and local laws, statutes regulations, ordinances, rules or orders. If any hazardous, toxic or dangerous substances as defined by federal, state or local laws, statutes, regulations, ordinances, rules or orders, ("Hazardous Substances") are encountered at the site, and if these Hazardous Substances require handling, transportation or disposal at an off-site facility, Contractor will assist in advising the Client of his options. However, Contractor will not "arrange" for disposal of, accept title to, sign manifests for, or take control of any Hazardous Substances, unless expressly stated in the "Scope of Work". Client shall indemnify and hold Contractor harmless from any claims, damages, fines and fees, litigation or expenses, arising out of or in any way related to handling, transportation and disposal of any Hazardous Substances in the course of Contractor's performance of this Agreement

Restoration

The Client understands that in the normal course of work, some minor damage to property may occur including damage to landscaping, pavement, sprinkler systems, and interior building finishes. While the Contractor will act to minimize damage, the Client understands that the cost of restoration is not included in this agreement unless expressly stated in the scope of work.

Independent Contractor

Contractor shall perform all work under this agreement as an independent contractor, retaining complete control over its personnel and operations. Neither Contractor nor its subcontractors shall be, or shall be construed to be Client's

employees or agents, or have authority to bind Client in any way.

Indemnity

a. Contractor shall indemnify and hold harmless Client, and its respective officers, directors, employees, subcontractors, agents and assigns ("Representatives"), from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Contractor or its Representatives; and, provided that such injury, death, or property damage is not caused by the sole or contributory negligence of Client, or its Representatives; and provided further, that Contractor's liability hereunder shall be limited to and not exceed the insurance coverage and limits of liability identified in this proposal or the total cost of services under of this agreement, whichever amount is less.

b. Client shall indemnify and hold harmless Contractor, and its Representatives, from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Client or its Representatives; and provided further that such injury, death, or property damage is not caused by the sole or contributory negligence of Contractor or its Representatives.

c. The provisions this paragraph shall survive the completion of the work or the termination of the agreement between Contractor and Client.

Dispute Resolution

All claims, disputes and other matters in question between the Contractor and Client arising out of, or relating to, this agreement or breach thereof, shall be decided by arbitration in accordance with the construction industry rules of the American Arbitration Association, unless the parties mutually agree otherwise. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed in writing with the other party to the contract agreement within a reasonable time after the claim, dispute or other matter in question has arisen.

Subcontractors

The Contractor reserves the right to remove any person, firm or corporation (Subcontracted to the Contractor) from participation in the services being provided to the Client.

Termination

If the work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, through no act or fault of the Contractor or its Representatives, or if the Client has failed to make payment as provided in this agreement for work performed, or has otherwise stopped the contractor's work, then the Contractor may at his option provide three (3) days notice to the Client, terminate this agreement and recover from the Client, payment for all work completed, with all costs arising out of such termination.

Sample Handling and Retention

Generally test samples or specimens are consumed and/or substantially altered during analysis. Contractor, at its sole discretion, will cause disposal of test samples, unless Client requests otherwise, in writing.

Reporting

By virtue of entering into this Agreement and providing services hereunder, Contractor does not assume responsibility for any conditions at the site that may present a danger, either potential or real, to the health, safety or the environment, except as set forth in the "Scope of Work".

Client hereby agrees to promptly notify Contractor of any Hazardous Substances and any special risk to human health, the environment or equipment on site of which Client is or becomes aware. By virtue of entering into this agreement or of providing services hereunder, Contractor does not assume control of or responsibility for reporting to any federal, state or local public agencies or governmental authorities any conditions at the site that may present a potential danger to health, safety, or the environment.

Waste Characterization

Prior to Contractor's performance of any services under this agreement, Client shall provide Contractor with an accurate waste characterization, which fully informs Contractor of the chemical, physical and hazardous characteristics of any waste to be managed pursuant to this agreement, unless the express responsibility of Contractor as stated in "Scope of Work". Client shall promptly notify Contractor if the waste characterization, or process generating the waste, changes in any respect during the term of this agreement.

Non-conforming Waste

Within a reasonable time after receipt of waste, Contractor may reject any waste that does not materially conform to the characterization or sample provided to Contractor by Client. Contractor shall immediately orally notify Client of such rejection and the manner in which the waste is non-conforming and shall confirm such oral notification in writing within a reasonable period of time. In the event of such rejection, Contractor shall have the right to: (a) return the waste to Client; or (b) arrange for treatment or disposal of the waste at another permitted facility. In any event, Client shall pay all additional fees and costs incurred in the handling of non-conforming waste, including, without limitation, transportation, storage, treatment, and disposal charges.

Title To Waste

Title, responsibility and risk of loss for waste conforming to the waste characterization shall pass from Client to Contractor as follows: (a) if Contractor provides transportation, upon departure of the Contractor vehicle carrying the waste from Client's site; (b) if Client provides transportation, upon acceptance of the waste at the Contractor facility or facility designated by Contractor.

Entire Agreement

The agreement and any referenced attachments constitute the entire agreement between Contractor and Client and supersedes all prior or oral or written representations or agreements. This agreement shall not be modified except in writing and signed by both parties.

Severability

If any of these General Conditions shall be finally determined to be invalid and unenforceable in sole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties.

Applicable Law and Venue

This Agreement shall be governed by the laws of the state of New Mexico. All actions, disputes, claims or other matters arising from this agreement shall be decided per the "Disputes Clause" in Albuquerque, New Mexico.

Limitations of Liability

In no event will the contactor be liable to the Client or anyone else (including third-party beneficiaries), for any consequential, incidental, special or indirect damages, including lost revenue and profits that result in any way connected with the services provided herein.

The Client agrees that the liability of the contractor arising out of any kind of legal claim (whether in contract, tort or otherwise) in any way connected with the services provided will not exceed the amount the Client originally paid the contractor for the service, or the available insurance identified elsewhere in the agreement, whichever amount is less.

Cooperative Educational Services
CES

Contract Award Letter

January 02, 2024

Keers Remediation, Inc
5904 Florence Av. NE
Albuquerque, NM 87113

RE: Contract Award for:
2024-13-C121-ALL Hazardous Waste Analysis, Inspection, Sampling, Removal, Disposal, Abatement, Remediation, Restoration Services and Related

Dear Procurement Partner

Cooperative Educational Services (CES) thanks you for responding to our 2024-13 solicitation. The responses have been reviewed and it is our pleasure to inform you that your company has been selected to provide the products and services indicated in your response.

The Contract, in conjunction with the Contract and RFP documents, constitute the Agreement between the parties. Please retain all documents for your records. This Indefinite Delivery and Indefinite Quantity contract, as defined in NMSA 13-1-63; beginning December 22, 2023 and expiring December 21, 2027, pursuant to 13-1-150 NMSA.

It is the vendor's responsibility to keep pricing up to date throughout the life of the contract.

Sincerely yours,

Cooperative Educational Services

David Chavez
Executive Director, Chief Procurement Officer
Office: 505.344.5470

ACCEPTANCE OF PROPOSAL AND OFFER
AND CONTRACT AWARD

RFP NUMBER: 2024-13
RFP DESCRIPTION: Hazardous Waste Analysis, Inspection, Sampling, Removal, Disposal, Abatement, Remediation, Restoration Services and Related
CONTRACT NUMBER: 2024-13-C121-ALL

CONTRACT

This contract award is being made by Cooperative Educational Services ("CES"), 10601 Research Rd. SE, Albuquerque, New Mexico 87123 effective this 22nd day of December 2023, to Keers Remediation, Inc, with its principal office located at 5904 Florence Av. NE, Albuquerque, NM 87113, pursuant to the above referenced CES conducted Request for Proposal ("RFP") or Request for Bids ("RFB") procurement, and Contract Holder accepts the award and enters into this contract pursuant to the following terms and conditions.

RECITALS

Cooperative Educational Services (CES) is a cooperative procurement agency created by a Joint Powers Agreement as authorized by Section 11-1-1, et. seq., N.M.S.A., 1978, and Section 13-1-135 and procures tangible personal property, services and construction services ("Products, Services and/or Construction Services") pursuant to the New Mexico Procurement Code for the benefit of its Members and Participating Entities. The Members consist of public educational institutions in New Mexico that are signators to a Joint Powers Agreement establishing CES as their procurement agency. The Participating Entities are governmental and 501(C) (3) organizations that have entered into Participating Entity Agreements with CES which allow them to take advantage of the procurement efforts of CES.

The undersigned ("Contract Holder") has successfully responded to a RFP or RFB published by CES in accordance with the Procurement Code, (13-1-103, 111, 112), and Contract Holder is being awarded this RFP or RFB contract by CES which allows Contract Holder to offer Products, Services and Construction Services in accordance with the terms and conditions set forth herein and in the RFP or RFB documents and this contract award.

CONTRACT TERMS

1. The initial contract term shall be from the effective contract award date December 22, 2023 through December 21, 2027. CES reserves the right to renew the Contract through a written amendment signed by all required signatories, but in any case, the Contract shall not exceed the total number of years allowed pursuant to NMSA 1978 13-1-150. CES reserves the right to offer month-to-month extensions if it is determined by CES to be in the best interest of CES Members/Participating Entities

2. Contract Holder agrees and acknowledges that the contract terms and provisions are those contained in the above referenced RFP or RFB and agrees to furnish all Products, Services and/or Construction Services in compliance with all terms, conditions, specifications of and amendments to this RFP or RFB. Contract Holder understands that his obligations under this RFP or RFB contract extend to CES Members and Participating Entities who are third party beneficiaries of

this RFP or RFB procurement process. The Members/Participating Entities may negotiate with Contract Holder certain additional terms and conditions relating to the scope of services and other performance details. However, the terms and conditions of the RFP or RFB may not be altered or amended except with the approval of CES and in accordance with the State Procurement Code.

3. Contract Holder acknowledges and agrees that CES' purpose and function is to act as a cooperative procurement agent on behalf of its Members and Participating Entities so that they may take advantage of these procurement efforts. CES does not have any subsequent responsibility relating to the quality and fitness of any Products, or the performance of any Services and Construction Services by Contract Holder. Any purchase orders placed by a CES Member or Participating Entity with Contract Holder directly or through CES and any resulting contract between the Contract Holder and a CES Member or Participating Entity do not create any additional obligations on the part of CES.

4. For transactions which involve CES transmitting purchase orders from a Member/Participating Entity to Contract Holder, CES volunteers to act as a payment facilitator to make payments to Contract Holder with funds transferred to CES by the Member/Participating Entity in accordance with Member/Participating Entity's written instructions and to provide an accounting of all monies paid or received by CES pursuant to this Agreement. CES also volunteers to provide informal mediation services between Contract Holder and Member/Participating Entity in the event any dispute arises between them.

5. Contract Holder understand and agree that upon CES' receipt of funds from the Member/Participating Entity, CES has no right or authority to thereafter apply those funds to any purpose other than as instructed by Member/Participating Entity. CES shall incur no liability to Contract Holder except for liability arising from CES' own gross negligence or willful misconduct, to the extent allowed by New Mexico law. Through this procurement process, Contract Holder is authorized to provide the described Products, Services or Construction Services. CES has no obligation or right to involve itself with the manner or method by which Contract Holder provides these Products, Services or Construction Services.

6. To the extent allowed by New Mexico law, Contract Holder agrees to hold CES harmless from all costs, expenses, attorney fees and judgments based upon claims between a Member/Participating Entity and Contract Holder in connection with the specified Products, Services or Construction Services provided by Contract Holder

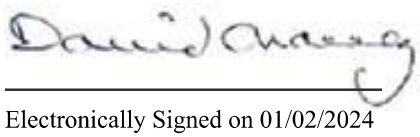
7. Contract Holder agrees that it will not assert any claim against CES in the event that a dispute arises regarding the alleged failure of Contract Holder or a Member/Participating Entity to perform as provided for in the RFP or RFB documents, any purchase order or other contract between Contract Holder and a Member/Participating Entity. This does not include claims against CES based upon the alleged gross negligence or intentional acts of CES.

8. Any liability incurred in connection with this Agreement shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 et seq, NMSA 1978, as amended.

The Recitals are incorporated herein as contract terms.

Agreed effective the above date.

Cooperative Educational Services



Electronically Signed on 01/02/2024

Executive Director

Date: 01/02/2024

Keers Remediation, Inc

Amarante Jaramillo

Electronically Signed on 01/02/2024

President/COO

GENERAL SCOPE OF WORK AND SPECIFICATIONS

Category 1 – Lot 2 – Removal and Disposal of Asbestos, Hazardous and /or Contaminated Materials, Construction Services – Remediation, Restoration and Related Services

PART I INTRODUCTION

A. GENERAL

The products and equipment under this solicitation will be set forth in each individual Category's detailed specifications or detailed Scope of Work, as agreed upon by the CES Eligible Agency and the Contractor, and that is based on the product, services, or deliverables acquired through this solicitation. The CES General Terms and Conditions and Supplemental Construction Terms and Conditions are a part of this contract.

B. NOTICE

Price agreements resulting from this RFP, are pursuant to New Mexico Procurement Code, NMSA, 1978, 13-1-117 and NMSA, 1978, 13-1-153.

This RFP is an Open-Ended RFP: Open-ended RFP - At the discretion of CES, the RFP may remain open for accepting additional proposals after a source award or multiple source awards are made to allow CES to make additional source awards if CES determines in accordance with ¶13-1-154 NMSA 1978 that such additional awards are necessary to fully meet CES member or participating entity service or economy needs identified by CES prior to a source award(s) or identified after a source award(s) is made. Any new offeror may not have access to any RFP documents submitted by another offeror or to documents involved in the rating or ranking process of offerors, as this would negate the open and fair competition process. Offerors that submitted a proposal for this RFP event and did not receive a recommendation for award may not submit a new proposal for the same RFP event. New proposals will be evaluated as prescribed in the original RFP and evaluated against all other RFP proposals. Any new source awards will be aligned with the contract end date of the original source awards. CES reserves the right to terminate the opportunity for submittal of additional offers at any time prior to the original contract award expiration date.

Any contract awarded under this solicitation is an indefinite quantity, indefinite dollar solicitation. All costs associated with preparing quotes/job orders/cost proposals shall be the responsibility of the contractor and must be based on the scope of work and in compliance with pricing submitted.

PART II SCOPE OF WORK AND SPECIFICATIONS

A. GENERAL SCOPE OF WORK ALL CATEGORIES AND LOTS

CES on behalf of its Members and Participating Entities is seeking licensed (as applicable), qualified, and experienced Vendor/Contractors to plan, design, and fully execute a complete and comprehensive program for the inspection, sampling, microbiological testing, analysis, removal, disposal of various types of hazardous, contaminated materials, asbestos, remediation, restoration, and

related services for CES Members and Participating Entities statewide. The Offeror must demonstrate through their response to this RFP that they possess the necessary qualifications, experience, resources, and capacity required to provide the required products and services within each of the regions that they propose to serve.

The General Scope of Work and Specifications shall apply to all Lots within this solicitation. The scope of work and minimum specifications in each lot defines the quality and characteristics of the desired commodities, and/or services. They are based on specifications from known acceptable providers, manufacturers, processes, materials and/or brands. Specifications are not intended to be exclusive or restrictive. Offerors may offer alternative commodities solutions, or alternate manufacturers, which meet the quality and performance characteristics as required in the specifications. CES reserves the right to review all proposals and make the final determination on the acceptance of any alternate commodities, solutions or manufacturers offered. The Offeror may respond one or all Lots. The words "Offeror" and "Contractor" are used interchangeably throughout this document.

Category 1 - Lot 2 – Removal and Disposal of Asbestos, Hazardous and /or Contaminated Materials, Construction Services – Remediation, Restoration and Related Services

Scope of Work

CES is seeking licensed, qualified environmental contractor(s) in the State of New Mexico to assist CES Members/PE's, on an ongoing basis in establishing and implementing a hazardous material investigation, environmental site assessments, facility and compliance audits, storage, microbiological testing, removal and disposal of various types of hazardous and contaminated goods and materials that may include but are not limited to: asbestos containing materials; underground fuel storage tanks, contaminated soil, building materials, medical waste, animal waste, bird droppings, mold or mildew abatement, lead abatement, based products, old paint, cleaning products, science lab chemicals, industrial, automotive and maintenance waste, filtration systems, and air duct cleaning, meth lab and crime scene cleanup, decontamination and remediation. These events have become more difficult to deal with due to the increased awareness and EPA, OSHA, State Fire Marshal and federal, state and local regulations governing these items. Therefore, CES is seeking Offeror(s) to assist its Members/PEs in training, assessing, evaluating and dealing with and disposing of these items in a proper and economical manner. Provide removal and disposal of asbestos, hazardous and/or contaminated materials, construction services, remediation, restoration, and related services. The Contractor will furnish all management, documentation, labor, materials, and equipment needed to perform and complete the scope of work stated for each individual project requested under this RFP. This solicitation does not include services and/or activities relating to the installation of new material or new development of the site. Contractor(s) shall demonstrate that they possess the licensure, expertise, capacity, and resources to provide these services to CES Eligible Agencies on an as-needed basis, per industry standards.

1. The contractor shall assist the CES Member/PE in developing and establishing a scope of work for each project, which includes a description of the amounts, types and locations of

the hazardous materials which are to be removed and disposed of. To assist in this process, the contractor must request and, if available, the CES Member/PE shall provide all information relating to the inventory of and the analytical results of the materials to be covered by the project. Depending on the project scope, the contractor shall perform a site visit and make its own assessment and evaluation to confirm the scope of work, site conditions and types of materials involved. Any scope of work developed for a project under this solicitation shall include a detailed description of the procedures to be used to remove the hazardous materials, the disposal site, any/all required documentation necessary to proceed with the project and a cost proposal indicating all the associated costs to be incurred during the proposed project. This solicitation covers only those services directly related to the inspection, assessment, analysis, removal and disposal of hazardous materials and restoration. This solicitation does not include services and/or activities relating to the installation of new material or new development of the site.

2. It may be that the products and services offered herein will be required to be performed after normal business hours, on weekends and/or holidays as specified by the CES Member/PE. However, if a project will not interfere with the Member's/PE's day-to-day activities, then the project can be performed during normal operations.
3. The scope of this solicitation does not allow for the contractor to offer and/or install HVAC equipment or construction services that are not directly part of the restoration associated with the removal and disposal of hazardous materials.
4. The Offeror must be licensed/certified in asbestos abatement, inspection, sampling, testing, and analysis, hazardous waste disposal, and must comply with all State of NM and Federal Environmental and Occupational Safety and Health Administration (OSHA) rules and regulations. The Offeror is responsible for knowledge of any revisions, updates and new codes, regulations, and interpretations.
5. The Offeror must be able to assess and evaluate CES Member's/PE's sites to determine and develop an efficient and cost-effective plan of action along with a scope of work on how to remove and dispose of identified contaminated, hazardous, and non-hazardous waste/materials.
6. The Offeror will be responsible for ensuring, establishing, and performing all abatement procedures in accordance with federal, state and local requirements. This may require that the work be performed after hours, on weekends and holidays, and as worked and coordinated with the individual CES Member/PE. However, if a specific project will not interfere with the day-to-day operations of the CES Member/PE or endanger the health, welfare and safety of staff, students, and community, then the project may be performed during the normal working hours.
7. Prior to the commencement of any project requiring special conditions at the work site, the Offeror shall provide, submit, and receive any/all written notifications, permits and approvals required by federal, state and local governing agencies, prior to the commencement of any onsite project activity. The Offeror must communicate what is required, coordinate such requirements with and receive the approval of the CES Member/PE prior to proceeding with the work. It will be the Offeror's responsibility during the performance of the work to establish, maintain, supervise and be in full control of the project site until such time that the hazard no longer exists, and the site is safe for normal operations.

8. The Offeror will supply all labor, materials, services, insurance, permits and equipment necessary to perform the work in accordance with all applicable federal, state, and local regulations, standards, and codes governing asbestos and hazardous materials abatement and other trade work done in conjunction with the abatement and restoration as required.
9. Prior to the commencement of any project, special conditions at the site must be considered by the Offeror when performing the asbestos abatement (that is, high temperatures; equipment that must remain in operation; other toxic substances in the air, running through pipes or contaminating surfaces etc.). The Offeror will be responsible for obtaining this information from the CES Member/PE.
10. The Offeror is responsible for restoring the work area and auxiliary areas used during the project to a condition that is safe, equal to or better than the original and accessible to the CES Member/PE. The Offeror shall, during the progress of work, remove and dispose of all debris, and keep the premises clean. Upon completion of the work, the Offeror will remove all construction equipment and surplus materials. Any damage caused during the performance of activities will be repaired by the contractor at no additional expense to CES or its Member/PE.
11. The work area shall be cleaned in compliance with all federal, state, and local requirements, and any other criteria agreed upon by the Offeror and the CES Member/PE prior to initiation of the project.
12. The Offeror shall maintain documentation including daily logs to include:
    a. Job progress reports detailing abatement activities, daily field activities, daily air monitoring and lab results, NESHAPS notification and regulatory agency response, daily employee containment sign in/out, visitor on-site sign in/out,
    b. Copies of all transportation manifests, trip tickets and disposal receipts for all asbestos waste materials removed from the work area.
    c. Maintenance documentation on respirator filter changes, HEPA vacuums, negative pressure ventilation units and other engineering controls.
    d. Material testing conducted during the abatement for purposes of use of abatement activities (testing of encapsulate depth for penetration, testing of substitute materials for adherence to encapsulated surfaces).
    e. Current AHERA training certificates.

13. Upon the satisfactory completion of removal and disposal process, the Offeror will provide the CES Member/PE with documentation showing that the materials were properly disposed of, together with the location of the disposal site and EPA permit number for the disposal facility.
14. If requested, the Offeror will assist the CES Member/PE in identifying and classifying surplus and/or old chemicals, janitorial supplies, compounds or other industrial waste and materials found within its facilities, science, automotive, arts/crafts, industrial arts areas, educational classrooms, storage areas or any other building identified in the scope of work. The contractor will assist the Member/PE in determining the proper method for disposing of the materials identified by preparing a written proposal clearly stating the process to be used, the disposal site to be used and all cost associated with the proposed project.

15. If requested, the Offeror will assist the CES Member/PE in identifying the most advantageous method of cleaning various types and sizes of HVAC air systems and duct work. All work performed must be by a fully trained, qualified, and certified air system cleaning specialist who has successfully taken and passed a comprehensive examination in air quality assessment, safety regulations, and heating, ventilation and air conditioning systems offered by NADCA. All waste and hazardous materials generated from the project shall be properly stored, handled, transported, and disposed of in accordance with federal, state and local requirements.
16. If requested, the Offeror will assist the CES Member/PE in identifying the most advantageous method of containment and removal of contaminated materials caused by accidents, construction or remodeling projects, mold or mildew, bird or rodent droppings or other human and animal waste, contamination by chemical seepage or improper storage or any other causes. The Offeror will prepare a written proposal clearly stating the process to be used, the disposal site to be used and all costs associated with the proposed project.
17. If requested, the Offeror will assist the CES Member/PE in identifying the most advantageous method for the removal and disposal of leaking underground fuel storage tanks. If soil contamination exists, Offeror will assist the Member/PE in developing a remediation plan for disposing of contaminated materials in accordance with EPA, federal, state, and local requirements. The Offeror will prepare a written proposal clearly stating the process to be used, the disposal site to be used and any/all costs associated with the proposed project.
18. If requested, the Offeror will assist the CES Member/PE with environmental investigation services to identify, locate, determine the source or cause, and develop the most advantageous method and plan to remediate the environmental risk observed and/or suspected to exist. The Offeror shall provide the services necessary to remove, transport and dispose of any hazardous materials identified in accordance with EPA, federal, state and local requirements. The Offeror will prepare a written proposal clearly stating the process to be utilized, the disposal site to be used and any/all costs associated to the proposed project.
19. If requested, the Offeror will assist the CES Member/PE with investigating, assessing, and developing plans relating to dealing with ground water, water well monitoring, drinking and tap water quality studies, etc. The Offeror will prepare a written proposal clearly stating the process to be utilized, the actions to be taken and any costs associated with the proposed project.

20. Upon acceptance of the Offeror's proposal to perform the work requested by the Member/PE and the receipt of a CES purchase order, the Offeror will be responsible for preparing all documentation required and submitting and receiving the proper permits from the various federal, state and local governmental agencies required to complete the scope of work as agreed to by all parties Submit a Certificate of Insurance naming CES and the CES Member/PE as additional insured, along with 60-day notice of cancellation.
21. The Offeror must comply with all current federal and state regulations/requirements:
    a. Occupational Safety and Health Administration (OSHA)

b. Title 29, Code of Federal Regulations, Section 1910.1001, Occupational Safety and Health Standards - Asbestos
c. Title 29, Code of Federal Regulations, Section 1910.134, Occupational Safety and Health Standards – Respiratory Protection
d. Title 29, Code of Federal Regulations, Section 1926, Safety and Health Regulations for Construction
e. Title 29, Code of Federal Regulations, Section 1910.1020, Access to Employee Exposure and Medical Records
f. Title 29, Code of Federal Regulations, Section 1910.1200, Hazard Communication
g. Environmental Protection Agency (EPA)
h. Title 40, Code of Federal Regulations, National Emission Standard for Hazardous Materials
i. Title 40, Code of Federal Regulations, Part 763, Asbestos
j. New Mexico State Construction Industries Licensing Act, 1978

22. Upon completion of the project, the Offeror will submit satisfactory proof to the CES Member/PE that required permits, site location and arrangements for transportation and disposal of the hazardous materials have been made. Submit the name of the landfill to be used for disposal and show proof that all regulations pertaining to hazardous materials disposal were met. Obtain and submit a copy of handling procedures and list of protective equipment used for hazardous material disposal at a landfill and signed by the landfill owner. A manifest will be used for this purpose.
23. When required, submit manufacturer's certification for all equipment to be used during the removal and disposal process as proof that it is EPA certified and designed for this type of activity.
24. When rental equipment is to be used in the removal of hazardous materials or to transport contaminated waste, a written notification concerning intended use of the rental equipment must be provided to the rental agency with a copy submitted to CES Member/PE.
25. If the project is to last more than one week, submit weekly job progress reports detailing the types of activities performed. Include a review of progress with respect to previously established milestones and schedules, major problems and action taken, injury reports, equipment breakdown and bulk materials stored onsite.
26. Submit copies of all transport manifests, trip tickets and disposal receipts for all waste materials removed from the work area during the removal process. Manifests are to be notarized by the receiving agency.
27. If required by the CES Member/PE, submit daily copies of worksite entry logbooks with information on work and visitor access.
28. If required by the CES Member/PE, submit logs documenting filter changes on respirators, HEPA vacuums, negative pressure ventilation units and other engineering controls.
29. If required by the CES Member/PE, submit a binder with the following information for close-out documentation of all project activities and reports:
    a. Daily field activity reports
    b. Daily air monitoring reports and laboratory analytical results, if required
    c. Any CID, OSHA or EPA or regulatory agency inspection reports, site visit reports and other communications
    d. Daily employee containment sign-in/out logs if required.
    e. Visitor onsite sign-in/out logs

f. Waste manifests, including EPA permit number for disposal facility.
g. Current medical certificates if required.

30. Visually inspect or re-inspect and assess the condition of friable known or assumed ACBM.
31. Visually inspect material that was previously considered non friable ACBM and touch the material to determine whether it has become friable since the last inspection or re-inspection.
32. Identify any homogeneous areas with material that has become friable since the last inspection or re-inspection.
33. Sampling - An accredited inspector shall collect, in a statistically random manner that is representative of the homogeneous area of suspected ACM, bulk samples from each homogeneous area of friable surfacing material for testing.
34. For each homogeneous area of newly friable material that is already assumed to be ACBM, bulk samples shall be collected and submitted for analysis in accordance with 763.86 and 763.87.
35. Assess the condition of the newly friable material in areas where samples are collected, and newly friable materials in areas that are assumed to be ACBM. Reassess the condition of friable known or assumed ACBM previously identified.
36. Record and submit to the designated person a copy of such information that is required under 763.85 (b) (3) (vii) within 30 days of the re-inspection.
37. Update and/or provide the CES Member/Participating Entity a management plan and schedule (developed in accordance to federal AHERA, 40 CFR 763, to include all updates as published for the final rule and notice, and state regulation and requirements) for the re-inspection of all friable and non-friable known or assumed ACBM in each facility building that is leased, owned or otherwise used as a school or public building.
38. Provide an inspection report with the date of the inspection signed by each accredited person making the inspection, State of accreditation, and if applicable, his or her accreditation number.
39. Provide an inventory of the locations of the homogeneous areas where samples are collected, exact location where each bulk sample is collected and the dates that samples are collected, homogeneous areas where friable suspected ACBM is assumed to be ACM, and homogeneous areas where non-friable suspected ACBM is assumed to be ACM.
40. Provide the name and address of each laboratory performing an analysis, the date of analysis, and the name and signature of the person performing the analysis shall be submitted to the CES Member/PE designee for inclusion into the management plan within 30 days of the analysis.
41. Provide training for CES Member(s) or Participating Entity(s) that fulfills the requirements that EPA, DOT, and OSHA mandates for those who handle or work near hazardous substances.

1. General Requirements

A. New Mexico Contractor license requirements:

1. GB-98 contractor may bid and contract as the prime contractor of a project that involves work authorized by the GB-98 license classification, regardless of the percentage of work in the mechanical/plumbing and/or electrical trades. The work outside the scope of the prime contractor's license classification(s) must be subcontracted to an entity validly licensed in the appropriate classification(s).

2. If subcontractors are used to perform these and other related services, they must possess valid New Mexico contractor licenses for the services they will perform.
3. Any contract awarded under this Lot is an indefinite-quantity contract. All costs associated with preparing quotes/job orders/cost proposals shall be the responsibility of the contractor and must be based on a detailed scope of work and in compliance with one of the approved pricing methodologies.
4. The Offeror must be willing and able to demonstrate its' knowledge, understanding and experience with dealing and working with drawings, specifications and general provisions of removal and disposal of asbestos, hazardous and/or contaminated materials, construction services, remediation, restoration, and related services, related trades and utilities work which may be part of the project.
5. The Offeror must be willing, able and have the ability and capacity to include but not limited to, all labor, materials, equipment, site inspection and preparation. These services may be provided by the Offeror's own crews and staff or by subcontractors contracted and supervised by the Offeror. It should be noted that the level of the Offeror's involvement will depend on the Member's requirements.
6. For any project contracted under this RFP, the proposer must comply with the Americans with Disabilities Act (ADA) (42 USC Section 12101 et seq.) and the Americans with Disabilities Act Architectural Guidelines (ADAAG), as well as the implementing requirements, 28 CFR Part 36, Federal Register, Vol. 56, No. 144, July 26, 1991, as amended.
7. The Offeror must possess a knowledge and understanding of all federal, state, and local government codes, regulations and requirements dealing with removal and disposal of asbestos, hazardous and/or contaminated materials.
8. If any part of the design or construction work is to be performed by the CES Member or Participating Entity's architect and/or a third party not associated with the Offeror, the Offeror, prior to proceeding, must provide a signed affidavit stating that it has inspected and has accepted the work completed as meeting and/or exceeding manufacturer, industry and governmental standards and requirements. If the work is not acceptable, the Offeror must notify the Member immediately in writing stating what is not acceptable and on what this detail the reasons for the determination. was made.
9. By accepting a CES or CES Member or Participating Entity purchase order and executing the construction contract, the Offeror acknowledges that he has visited the site, has familiarized himself with the local conditions under which the work is to be performed, and understands the scope of work as defined in the contract documents and the product specifications requested.
10. The cost for temporary utility services electrical, water, gas, etc., that is utilized during the construction process will be identified and agreed upon in writing by the CES Member or Participating Entity. Utility services (electrical, water, gas, etc.) utilized by the contractor to maintain a project office trailer, maintenance shop, storage facilities, security lighting, etc., will be the responsibility of the contractor and can only be transferred to the CES Member or Participating Entity on written agreement specifically stating what contractor's utilities it will be responsible for. Copies of such agreements shall be provided to CES prior to a CES purchase order being issued.
11. The Offeror is responsible for ensuring that any the proposed project's design and construction drawings as a result of this RFP clearly indicate, identify and communicate

the products, services and testing that must be provided to deal with existing site conditions and that the components and installation of systems are in accordance and comply with applicable federal, state and local rules and regulations including the State of New Mexico building codes and requirements.

12. All work will be in compliance with OSHA safety requirements and any additional applicable federal, state, or local safety requirements. When specifications or the scope of work will result in a violation of a code or result in an unsafe condition, the contractor must inform the CES Member or Participating Entity representative of the situation. The contractor will not construct any sub-assemble, structure, or device or produce any condition that intentionally violates a health, safety or UBC code or safety standard.
13. The Offeror shall make its' own site visit to fully acquaint themselves with the site, existing facilities, and utilities, and shall fully understand the difficulties and restrictions attending the execution of the work under this RFP. Offeror shall advise the Member in writing and receive its' acceptance of any restrictions and/or anticipated difficulties prior to accepting a contract to do the individual project.
14. All material shall be guaranteed to the extent that:
    a. Installed in accordance and the manufacturer's specifications.
    b. Will perform as specified per the manufacturer's specifications.
15. The Contractor shall maintain accurate and complete records, files, and documents to include state and local laws, ordinances, rules, regulations, manufacturers' instructions, and recommendations which are necessary and related to the work to be performed.
16. The Contractor will clearly identify each individual product and service and its cost in accordance with the pricing methodology as allowed in this RFP. A detailed price and cost submittal with all options that need to be considered will be submitted to the CES Eligible Agency in the format required by this RFP.
17. Upon execution of a contract the prime Contractor for a project with a value Twenty-Five Thousand Dollars ($25,000) or more, shall provide AIA Document 312-2010 Performance and Payment bonds in an amount equal to one hundred percent (100%) of the Job Order Amount to CES Member/Participating Entity. These bonds will protect all persons supplying labor and materials and the performance of the prime Contractor for the work provided per the contract. The prime Contractor will deliver AIA Document 312-2010 performance and payment bonds in the name of the CES Member or Participating Entity at contract execution. Copies of the bonds must be provided to CES within five business days of the Contractor's receipt of the CES purchase order.
18. The Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information to the CES Member/ Participating Entity. The Contractor will provide materials lists to include model, trade names and brand names and ratings (if applicable) for all materials necessary to complete the job. If CES or the CES Member/ Participating Entity requests any information, the records and files will be made available to them.
19. On the acceptance of the project proposal, the Contractor and the CES Member/ Participating Entity will need to create and file all required documents with CES, with all appropriate state and local governing authorities, and acquire permits and authorization. If required, the Contractor will complete and sign a CES third-party agreement between the buyer, Contractor, and Member or Participating Entity (owner). If an additional contract is completed between the Contractor and CES, the CES

Member or Participating Entity, the Contractor will submit a copy of the signed contract along with its project and cost proposal to CES. CES will verify the pricing to be in accordance with the RFP pricing and will issue a CES purchase order to the Contractor.

20. The Contractor must provide the CES Member or Participating Entity with a complete scope of work which includes a description of the work to be performed by the Contractor, the subcontractor, and the owner prior to the issuance of a purchase order.
21. In any contract between the Contractor and CES Member or Participating Entity based on this RFP, the terms and conditions of the RFP will prevail.
22. The Contractor, upon receipt of the CES purchase order, will provide CES with a copy of any applicable performance and payment bonds for the Contractor and any subcontractors, finalized project timelines, schedules of values, the NMDWS paperwork and additional required documents.
23. The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties (a minimum of one (1) year), the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to CES and its Members and are in addition to and do not limit any rights afforded to CES and its Members by any other clause of this order. The contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

3. QUALITY CONTROL

1. The Offeror shall make its' own site visit to fully acquaint themselves with the service area, existing facilities, and utilities, and shall fully understand the difficulties and restrictions attending to the execution of the work under this RFP. The Offeror shall advise the CES Member or Participating Entity in writing and receive its' acceptance of any restrictions and/or anticipated difficulties prior to accepting a contract to provide the waste management services requested.
2. All products/materials shall be guaranteed to the extent that:
    i. Will perform as specified per the manufacturer's specifications.
3. Limited Warranty
    i. The Offeror agrees that the products, supplies, or services furnished shall be covered by the most favorable commercial warranties (a minimum of one (1) year) (as applicable) the Offeror gives for such to any customer for such products, supplies or services. Defective components will be repaired or replaced on a factory exchange basis. Exclusions include, but are not limited to, accidents, neglect, abuse, misuse, or natural disasters. Details available on request.

PRICING METHODOLOGIES –

RSMeans Construction Procurement Catalog Pricing Methodology

1. The Offeror responding to this Lot will be required to use the current version of the RSMeans Construction Procurement Catalog to prepare a cost proposal covered by this Lot.
    a. The RSMeans Construction Procurement Catalog pricing method is to be the primary method for pricing projects covered by this Lot.
    b. When utilizing the RSMeans Construction Procurement Catalog pricing methodology, there are options that can be established that will govern how individual construction cost items can affect and modify the individual item's costs as a global setting and will determine the actual item's cost that appears on the project's price proposal. All such options must be disclosed and noted within the Offeror's cost submittal response.
    c. The individual item's cost shown in the RSMeans Construction Procurement catalog indicates the materials, equipment, labor, overhead and profit that will be charged the Owner for the construction item.
    d. All products and services required to complete the project's detailed scope of work provided must be listed.
    e. The Contractor must, for each individual cost item shown on their cost proposal, identify any of the RSMeans factors that are applicable.
    f. A current edition of the RSMeans Construction Procurement Catalog shall be utilized for the response to the RFP. A new edition is published every quarter throughout the calendar year with adjustments and updates to reflect current material costs, equipment costs, labor rates, market conditions, etc., and are included in the new addition and will limit the need for item prices to be adjusted. If a price increase occurs during the year that significantly affects the industry, the Contractor may request CES' approval for an adjustment.
    g. The quantity or unity of measure, of a product or service must accurately represent the required need.
    h. A subtotal of all the items selected will be presented and the Contractor's multiplier/factor awarded for the region will be applied to arrive at the project cost.
    i. Contractor's RSMeans factor, as part of the Offeror's response to this Lot, it will propose a factor that will be applied to the RSMeans Construction Procurement Catalog construction cost proposal to reflect the additional Contractor's costs to prepare for, mobilize, take possession of, secure and take control of the construction site, and to manage, supervise and complete all activities required by the project and the CES one and one quarter percent (1.25%) administrative fee.
    j. **The Offeror's factor must include all general condition items and the CES one and one quarter percent (1.25%) administrative fee**.
    k. Since all mobilizations, transportation and travel costs for both the contractor and its subcontractor's personnel are to be included in the Offeror's factor, if the Offeror intends to service CES procurement regions other than the region in which Offeror is located and intends to utilize subcontractor's that are not located in the CES procurement region where the project is located, the Offeror must take into consideration all of these variables and appropriately allow for them in its factor for each region it intends to serve.
    l. The Offeror will propose a factor for each of the CES procurement regions it intends to serve. This factor will be expressed as a whole number plus three (3)

decimals places. For example, if the Offeror proposes (0.925) and the project's construction quote/cost proposal subtotal is ten thousand ($10,000) dollars, then the calculation would be ($10,000 multiplied by 0.925 equals $9,250) total construction costs. If the Offeror proposes (1.125) and the project's construction quote/cost proposal subtotal is ten thousand ($10,000) dollars, then the calculation would be $10,000 multiplied by 1.125 would equal $11,250 for total construction costs.

m. The Offeror will propose the following factors for each CES procurement region it intends to service. The Offeror may propose factors that are the same for all regions or may vary between regions.

n. Provide Fixed Hourly Rates to be used in your Price Proposal as follows:

   i. Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Monday-Friday) (Outside Tribal Lands).

      1. One for work in normal hours when the total project cost (job order) in excess of $60,000, requiring state wage rates.
      2. One for work in normal hours when the total project cost (job order) is less than $60,000 and does not require state wage rates.

   ii. **Other Than Normal Working Hours (Defined as all hours not defined as normal hours above) (Outside Tribal Lands).**

      1. One for work in other than normal working hours when the total project cost (job order) in excess of $60,000, requiring state wage rates.
      2. One for work in other than normal working hours when the total project cost (job order) is less than $60,000 and does not require state wage rates.

   iii. **Project Funded by Federal Funds or on Tribal Lands Performed During Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Monday-Friday)**

      1. One for work in normal working hours when the total project cost (job order) is in excess of $2,000, requiring federal wage rates.
      2. One for work in normal working hours when the total project cost (job order) is less than$2,000 and does not require federal wage rates.

   iv. **Project Funded by Federal Funds or on Tribal Lands Performed Outside Normal Working Hours (Defined as all hours not defined as normal hours above)**

      1. One for work in other than normal working hours when the total project cost (job order) is in excess of $2,000, requiring federal wage rates.
      2. One for work in other than normal working hours when the total project cost (job order) is less than $2,000 and does not require federal wage rates.

Note: Factors c) and d) are utilized for projects funded by federal funds and require Davis Bacon Wage Rates or for projects located on tribal lands.

3. Cost of permits, performance and payment bond costs, tribal taxes and New Mexico Gross Receipt Taxes are shown as separate line items on the cost proposal.
4. All adjustment factors are expressed as an increase or decrease from the published prices.
5. When offering an adjustment factor, the Offeror must include in its factor:
    a. All general cost (General Conditions) such as home office overhead; all types of insurance, fringe benefits, payroll taxes, worker's compensation etc.; site visits; project meetings and owner support services; project development; project office staff, supplies, equipment, and paperwork; inspection and testing fees; training; supervision; JOC System License Fee; project mobilization and close-out and other related costs.
    b. Plan Checking and Permit Fees: Include as part of the response any plan checking fee as charged by any municipality, county, or state government (or any other applicable entity or agency with jurisdiction over the project) for checking contract documents prior to obtaining a building permit. Include in your response all costs incurred for permits relating to this requirement.
    c. The Contractor cost for Payment and Performance Bonds shall be listed as a line item in each proposal in excess of $25,000.

Note: Offerors and Subcontractors whose home location is in one region and the project is in another must build into their adjustment factor the above costs associated for doing projects in other regions. No general conditions relating to the above items will be allowed in a project's proposal unless it is submitted and approved in advance by the CES Eligible Agency CES.

o. **Performance and Payment Bond Costs**

Required for construction projects over $25,000.00. This represents the cost the vendor incurs to provide a performance and payment bond to the Member for an individual project when it is required. The Offeror is to indicate the percentage rate charged on the total cost of an individual project to obtain a bond, and the documentation to substantiate the rate, that is, two percent (2%).

p. **Alternative Methods of Costing O/P**

Used for those items that cannot be priced using the RSMeans pricing method, including sole source items. Offeror is to indicate the percent of overhead, or markup, to be added to these costs to obtain the standard cost on which the CES discount can be taken to achieve the CES price.

q. **CES Discount off Alternative Costing**

To obtain CES prices for those items that cannot be priced using the JOC Core pricing method. This represents the Offeror's discount % that is taken off the standard cost to obtain the CES price. Example: an item costs $1,000, percent of profit and overhead of

20% equals standard price of $1,200, less the CES discount of 10% or $120 equals the CES price of 1,080.

r. **Discounts Provided on Price Lists and Catalogs**

This represents the average discount provided by the Offeror on stated prices.

s. **Offeror's Support for CES Pricing**

This is the same % Discount as Offeror has stated on the Mandatory Form in the RFP documents.

ATTACHMENT B
TO
ACCEPTANCE OF PROPOSAL AND OFFER
AND CONTRACT AWARD

PRICING

All pricing including updates/changes must be uploaded through the vendor portal in the eProcurement System for review and approval by CES.

A Price List/Pricing: The Offeror will upload through the vendor portal electronic copies of or provide electronic access to the approved current price list(s) for products and services offered under this solicitation (RFP) upon execution of this contract. The Offeror must keep current all pricing for any contract issued as a result of this solicitation. Should the Offeror fail to update pricing with CES, the Offeror shall honor their pricing on file with CES at the time of their quote submittal to the CES Member/Participating Entity. Discounts off the current price list are permitted and must remain firm throughout the life of the contract. Discount off list price must be clearly noted in the price quote to the member. All pricing must include the CES administration fee.

B New Technology and Products: New products or related services announced by manufacturer and/or Contractor may be added to this existing contract. Pricing shall be equivalent to the percentage discount of other product(s); is substantially superior to the original product(s) offered; is discounted in a similar or to a greater degree; and if the product(s) meet the requirements of the original RFP. No products may be added to avoid competitive procurement procedures. CES is responsible for approving any product, service or technology for this contract. CES can reject any approved additions, any new product, service or technology for this contract, without cause.

C Price Quote/Proposal: When preparing a quote/proposal under a CES awarded contract, the Offeror must clearly identify and break out quantities, descriptions, supplies, materials, equipment and services into individual line items as they appear on the Offeror's awarded price schedule or pricing methodology. At a minimum all quotes or proposals shall include the following: description, "hourly labor rate or the list/catalog unit price", "the per cent discount offered" and the final "CES price". All stated prices must include the CES one point two five percent (1.25%) administrative fee. Shipping/Freight costs and the New Mexico Gross Receipts Tax as applicable must be stated in separate lines.

D Price Reduction, Promotional and Special Pricing: A price reduction can be offered at any time and will become effective upon approval by CES. CES reserves the right to approve or disapprove such requests.

E Price Increases: Anytime during the life of the contract, pricing can be updated (increased/decreased) with proper justification letter from the manufacturer or distributor thereof and will become effective upon approval by CES. CES reserves the right to approve or disapprove

such requests.

F Price Surcharges: Depending on current market conditions, surcharges may apply as approved by CES.

COST PROPOSAL

Lot 2 Removal and Disposal of Asbestos, Hazardous and/or Contaminated Materials, Remediation, Restoration and Related Services

Hazardous Waste Analysis, Inspection, Sampling, Removal, Disposal, Abatement, Remediation, Restoration Services and Related

2024-13

Keers Remediation, Inc

Product Name	Product Description	Unit Of Measure	All Regions	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8
Normal Hours Requiring State Wage Rates (Outside Tribal Land)	Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Mondays-Fridays),(Outside Tribal Land). Factor for work in normal hours when the total project cost is in excess of $60,000, requiring state wage rates.	Cost Adjustment Factor	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Normal Hours Not Requiring State Wage Rates (Outside Tribal Land)	Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Mondays-Fridays),(Outside Tribal Land). Factor for work in normal hours when the total project cost is less than $60,000, not requiring state wage rates.	Cost Adjustment Factor	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Other Than Normal Hours Requiring State Wage Rates (Outside Tribal Lands)	Other Than Normal Working Hours(Outside Tribal Land) (As defined in the RFP documents). Factor for work performed in other than normal hours when the total project cost is in excess of $60,000, requiring state wage rates.	Cost Adjustment Factor	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Other Than Normal Hours Not Requiring State Wage Rates (Outside Tribal Lands)	Other than Normal Working Hours (Outside Tribal Lands) (As defined in the RFP documents). Factor for work performed in other than normal hours when the total project cost is less than $60,000, not requiring state rates.	Cost Adjustment Factor	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Project Funded by Federal Funds or on Tribal Land During Normal Working Hours	Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Mondays-Fridays). Factor for work in normal hours when project cost is in excess of $2,000, requiring federal wage rates and involves Federal Funds.	Cost Adjustment Factor	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Project Funded by Federal Funds or on Tribal Land During Normal Working Hours	Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Mondays-Fridays). Factor for work in normal hours when project cost is less than $2,000, not requiring federal wage rates and involves Federal Funds.	Cost Adjustment Factor	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Projects Funded by Federal Funds or on Tribal Lands Performed Outside Normal Working Hours	Other than Normal Working Hours (As defined in the RFP). Factor for work in other than normal working hours when project cost is in excess of $2,000, requiring federal wage rates and involves Federal Funds.	Cost Adjustment Factor	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Projects Funded by Federal Funds or on Tribal Lands Performed Outside Normal Working Hours	Other than Normal Working Hours (As defined in the RFP). Factor for work in other than normal working hours when project cost is less than $2,000, not requiring federal wage rates and involves Federal Funds.	Cost Adjustment Factor	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Non-Pre-Priced	Non Pre-Priced - An item of work required by the detailed scope of work, but not included in the Construction Task Catalog. If architectural and engineering services are requried, they will be priced as a non pre-priced task.	Cost Adjustment Factor	1.35	1.35	1.35	1.35	1.35	1.35	1.35	1.35	1.35
Alternative Costing O/P	Alternative Methods of Costing - percent of overhead/markup and profit added to cost.	Percent	25 %	25 %	25 %	25 %	25 %	25 %	25 %	25 %	25 %
Alternative Costing CES Discount	Discounts Offered Off Alternative Costing Methods (cost/overhead/markup/profit) Less Rate of Discount.	Percent	2 %	2 %	2 %	2 %	2 %	2 %	2 %	2 %	2 %
Average Discount Off Published Price	Percent of Discount off Printed/Published Price Sheets	Percent	2 %	2 %	2 %	2 %	2 %	2 %	2 %	2 %	2 %

Product Name	Product Description	Unit Of Measure	All Regions	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8
Performance & Payment Bond Cost	This represents the cost the vendor incurs to provide a performance and payment bond to the Member for an individual project when it is required. The Offeror is to indicate the percentage rate charged on the total cost of an individual project to obtain a bond, and the documentation to substantiate the rate, that is, two percent (2%).	Percent	3 %	3 %	3 %	3 %	3 %	3 %	3 %	3 %	3 %
Offeror's Support for CES Pricing	Offerors Support for CES Pricing, Percent of difference between CES price and individual entity price.	Percent	2 %	2 %	2 %	2 %	2 %	2 %	2 %	2 %	2 %
Labor Rate - Hourly Rate	Acrredited Project Designer/Manager	cost	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75
Labor Rate - Hourly Rate	Acrredited Lead Risk Assesor	cost	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75
Labor Rate - Hourly Rate	Accredited Lead Inspector	cost	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75
Labor Rate - Hourly Rate	Accredited Management Planner	cost	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75	$ 75
Labor Rate -Hourly Rate	Certified Industrial Hygenist	cost	$ 190	$ 190	$ 190	$ 190	$ 190	$ 190	$ 190	$ 190	$ 190
Labor Rate - Hourly Rate	Administrative Support	cost	$ 40	$ 40	$ 40	$ 40	$ 40	$ 40	$ 40	$ 40	$ 40
Inspection - Cost	Cost Per Square Foot	cost	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15
3 Year Re-Inspection Cost	Cost Per Square Foot	cost	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15	$ 0.15
Sample Analysis - PLM (Bulk)	Cost Per Sample - PLM - (bulk) 24 hours	cost	$ 35	$ 35	$ 35	$ 35	$ 35	$ 35	$ 35	$ 35	$ 35
Sample Analysis - PLM point count	Cost Per Sample - PLM point count 24 hours	cost	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25
Sample Analysis - PCM - (Air)	Cost Per Sample - PCM - (air) 24 hours	cost	$ 11	$ 11	$ 11	$ 11	$ 11	$ 11	$ 11	$ 11	$ 11
Sample Analysis - TEM - (Air)	Cost Per Sample - TEM - (air) 24 hours	cost	$ 150	$ 150	$ 150	$ 150	$ 150	$ 150	$ 150	$ 150	$ 150
Sample Analysis - TEM - (Bulk)	Cost Per Sample - TEM - (bulk) 24 hours	cost	$ 125	$ 125	$ 125	$ 125	$ 125	$ 125	$ 125	$ 125	$ 125
Analysis - Laboratory Work	Fixed reimbursement amount to cover overhead and profit for every $100.00 spent for laboratory analysis work including reporting. Example: If your markup is 30% then for every $100.00 spent the fixed reimbursement amount is $30.00.	cost	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25
Equipment/Tool Rental (portable shower, portable HEPA vacuum, negative air monitor, IAQ monitor etc.)	Fixed reimbursement amount to cover overhead and profit for every $100.00 spent for equipment/tool rental. Example: If your markup is 30% then for every $100.00 spent the fixed reimbursement amount is $30.00.	cost	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25
Material and Supples	Fixed reimbursement amount to cover overhead and profit for every $100.00 spent for materials and supplies. Example: If your markup is 30% then for every $100.00 spent the fixed reimbursement amount is $30.00.	cost	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25	$ 25
Mileage Rate	Mileage rate for company owned vehicles (car/medium duty truck)	cost	$ 2.75	$ 2.75	$ 2.75	$ 2.75	$ 2.75	$ 2.75	$ 2.75	$ 2.75	$ 2.75
Per Diem Rate	Per diem rate - meals and lodging - per 24 hour period	cost	$ 175	$ 175	$ 175	$ 175	$ 175	$ 175	$ 175	$ 175	$ 175

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/31/2024

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
Brown & Brown Insurance Services, Inc.
PO Box 94450
Albuquerque NM 87199

CONTACT NAME: Kim Haines
PHONE (A/C, No, Ext): (505) 821-5888 **FAX (A/C, No):**
E-MAIL ADDRESS: kimberlee.haines@bbrown.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Nautilus Insurance Company	17370
INSURER B : Key Risk Insurance Company	10885
INSURER C : Great Divide Insurance Company	25224
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Keers Facility Services, LLC
5904 Florence Ave NE
Albuquerque NM 87113

COVERAGES **CERTIFICATE NUMBER:** 24-25 Keers **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:			ECP2040046-11	04/01/2024	04/01/2025	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 $ 100,000 $ 5,000 $ 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			BAP2040037-11	04/01/2024	04/01/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WCA2040038-11	04/01/2024	04/01/2025	[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
A	Pollution/Professional-Claims Made			ECP2040046-11	04/01/2024	04/01/2025	Per Claim Aggreagte Deductible	$1,000,000 $2,000,000 $5,000

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

- Remediation On-Call
- Point of contact: Caryn Grosse, Facilities Division

CERTIFICATE HOLDER
City of Santa Fe
PO Box 909
Santa Fe NM 87504

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

AUTHORIZED REPRESENTATIVE

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From: DUTTON-LEYDA, TRAVIS K.
To: GABALDON, RACHEL D.; Purchasing DET
Cc: BURNETT, SAM; CALABAZA, DEALVA X.; GROSSE, CARYN L.
Subject: RE: SOW Determination- Remediation
Date: Monday, April 22, 2024 3:30:47 PM
Attachments: image003.png

Greetings,

The scope of work as written would be General Services. This determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, the Procurement Manual, and state statutes.

Please note:

- Save this email as a PDF and upload it into the corresponding Munis records.
- Check with WorkQuest dba Horizons of New Mexico (vendor # 8673) (mloehman@horizonsofnewmexico.org) if this service appears on their approved list.
- If your request includes anything that needs to be reviewed and preapproved by another city Department/Division, please send your SOW to the corresponding email address, and provide their response to this office when you submit your procurement request for processing.
  - IT components - ereview@santafenm.gov
  - Vehicles – dmjaramillo@santafenm.gov
  - Grants - mtbonifer@santafenm.gov; cmthompson@santafenm.gov
  - Facilities, Furniture, Fixture, Equipment - jsburnett@santafenm.gov
- Ensure that the appropriate templates and forms are used https://intranet.santafenm.gov/finance_1 and documented procedures/laws/rules are followed. _
- > $20k per year, when processing this procurement, please ensure the procurement number issued by Munis and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is =/> $60k, per NMSA 1978, Section 13-1-102, the procurement method must be ITB (if you choose not to use a cooperative or an existing contract). If you feel you need to process an RFP, you must get an Authorization and Plan approved before you process.
- < $20k per year, one quote is acceptable.
- From $20k to $60k per year, if you aren't using a cooperative or existing contract, you'll need to provide 3 quotes in your req. Must use the Munis Bid Module after 12/21/2023.
- Please keep this as part of the procurement file for future reference.
- Figure out your funding source and **inform Purchasing**. To ensure that the proper documents and language are used, it is important to identify the funding source for the

subsequent contract. For instance, if federal funds are involved, the procurement request and subsequent contract must include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.

- Please review the pages linked below to determine whether any of the existing contracts/price agreements or cooperative agreements are applicable to this request. You might be able to use an existing price agreement to save time and money.
    - https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements/ (if you choose to use a Statewide, you do not need to ask Horizons if they can do the work. State Purchasing must offer the SOW to Horizons prior to placing the award on their website.)
    - https://naspovaluepoint.org/categories/
    - https://www.omniapartners.com/publicsector/contracts
    - https://www.buyboard.com/home.aspx
    - https://www.h-gac.com/Home
    - https://www.gsaelibrary.gsa.gov/
    - https://www.sourcewell-mn.gov/contract-search

- Submit or send your request to the appropriate MS Teams channel or email address:
    - RFPs requests to https://teams.microsoft.com/l/channel/19%3ad63b9c8b586d424fa5eed34177146ac5%40thread.tacv2/RFP%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - ITBs requests to https://teams.microsoft.com/l/channel/19%3a48e1e4588c0440a09cfbd9b907ed42d4%40thread.tacv2/ITB%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - Determination requests to purchasing_det@santafenm.gov
    - And all other requests to purchasing@santafenm.gov

Thank you for submitting this scope of work for my review.

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

Vision without action is merely a dream.
Action without vision passes the time.
Vision with action can change the world. ~ Joel A. Barker

From: GABALDON, RACHEL D. <rdgabaldon@santafenm.gov>
Sent: Monday, April 22, 2024 11:20 AM
To: Purchasing DET <purchasing_det@santafenm.gov>
Cc: BURNETT, SAM <jsburnett@santafenm.gov>; CALABAZA, DEALVA X. <dxcalabaza@santafenm.gov>; GROSSE, CARYN L. <clgrosse@santafenm.gov>
Subject: SOW Determination- Remediation

Good morning Travis,

I am requesting a determination on the following scope of work:

1) Removal and Disposal of Asbestos Hazardous and or Contaminated Goods and Materials, Inspection/Re-Inspection, Sampling, analysis and Remediation, restoration and Related Services.
2) Removal of hazardous materials, including asbestos containing building materials, toxic mold containing building materials, and biohazards including pigeon feces at various locations.
3) Engineering controlled removal methods to be utilized during remediation activities, as required by appropriate regulatory agencies.
4) All hazardous waste, including asbestos waste will be disposed of in compliance with all Occupational Safety and Health Administration (OSHA), National Emission Standards for Hazardous Air Pollutants (NESHAP), Environmental Protection Agency (EPA), and Department of Transportation (DOT) Federal Regulations and any other applicable regulations.
5) Testing and engineering shall be performed as needed or required by appropriate regulatory agencies.
6) Miscellaneous Trash Clean Up.

Thank you,

R. Denise Gabaldon, CPO
Contracts Administrator | CIP & Facilities Division | Public Works Dept.
Website: www.santafenm.gov
Email: rdgabaldon@santafenm.gov
Mobile: (505) 795-2439
Office: (505) 955-5934

From: Matt Loehman
To: KAHAHANE, ELIZABETH L.
Subject: Re: Horizons Determination – Remediation On-Call Services
Date: Wednesday, October 30, 2024 3:58:28 PM
Attachments: image001.png

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

Good afternoon Lisa,

Thank you very much for the opportunity, but we will decline this procurement.

Best regards,

Matt

Matt Loehman
Executive Director

Horizons of New Mexico
6121 Indian School Rd. NE, Suite 220
Albuquerque, NM 87110

office phone: (505) 345-1540
email: mloehman@horizonsofnewmexico.org
web: www.horizonsofnewmexico.org

The State Use Act helps people with disabilities become gainfully employed, and it saves you valuable time and resources otherwise used during the procurement process.

On Wed, Oct 30, 2024 at 3:55 PM KAHAHANE, ELIZABETH L. <elkahahane@santafenm.gov> wrote:

> Hello Matt,
>
> The City of Santa Fe is seeking a Horizons Determination for the following Scope of Work:
>
> - Removal and Disposal of Asbestos Hazardous and or Contaminated Goods and Materials, Inspection/Re-Inspection, Sampling, analysis and Remediation, restoration

and Related Services.

- Removal of hazardous materials, including asbestos containing building materials, toxic mold containing building materials, and biohazards including pigeon feces at various locations.
- Engineering controlled removal methods to be utilized during remediation activities, as required by appropriate regulatory agencies.
- All hazardous waste, including asbestos waste will be disposed of in compliance with all Occupational Safety and Health Administration (OSHA), National Emission Standards for Hazardous Air Pollutants (NESHAP), Environmental Protection Agency (EPA), and Department of Transportation (DOT) Federal Regulations and any other applicable regulations.
- Testing and engineering shall be performed as needed or required by appropriate regulatory agencies.
- Miscellaneous Trash Clean Up.

Please let me know if you have any questions.

Thanks!

Best,

Elizabeth "Lisa" Kahahane

Contracts Administrator | Facilities Division | Public Works Dept.

Email: elkahahane@santafenm.gov
M: (505) 795-2439

O: (505) 955-5934

CITY OF SANTA FE
FACILITIES

Contract Packet_Keers Remediation_CW on-call_10 30 2024_CG SSD1 ELK5

Final Audit Report 2025-02-21

Created:	2025-02-19
By:	Elizabeth Kahahane (elkahahane@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAkt1157pyLWIbZ2wrvm1ePOyNVwATvnID

"Contract Packet_Keers Remediation_CW on-call_10 30 2024_CG SSD1 ELK5" History

Document created by Elizabeth Kahahane (elkahahane@santafenm.gov)
2025-02-19 - 0:14:19 AM GMT- IP address: 63.232.20.2

Document emailed to CARYN GROSSE (clgrosse@santafenm.gov) for signature
2025-02-19 - 0:18:03 AM GMT

Email viewed by CARYN GROSSE (clgrosse@santafenm.gov)
2025-02-19 - 3:52:21 PM GMT- IP address: 104.47.64.254

Document e-signed by CARYN GROSSE (clgrosse@santafenm.gov)
Signature Date: 2025-02-19 - 3:52:32 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to JOHN BURNETT (jsburnett@santafenm.gov) for signature
2025-02-19 - 3:52:36 PM GMT

Email viewed by JOHN BURNETT (jsburnett@santafenm.gov)
2025-02-19 - 3:52:49 PM GMT- IP address: 174.240.22.15

Document e-signed by JOHN BURNETT (jsburnett@santafenm.gov)
Signature Date: 2025-02-19 - 3:53:20 PM GMT - Time Source: server- IP address: 174.240.22.15

Document emailed to rawheeler@santafenm.gov for signature
2025-02-19 - 3:53:23 PM GMT

Email viewed by rawheeler@santafenm.gov
2025-02-21 - 7:12:44 PM GMT- IP address: 104.47.65.254

Signer rawheeler@santafenm.gov entered name at signing as RW
2025-02-21 - 7:13:06 PM GMT- IP address: 63.232.20.2

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

Signature Date: 2025-02-21 - 7:13:08 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.

2025-02-21 - 7:13:08 PM GMT

CITY OF SANTA FE

The Purchasing Memo

Date: February 20, 2025

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

From: P. Fred Heerbrandt, P.E., Engineer Supervisor FH

Via: Mike Dozier, Wastewater Management Division Director MD
Jesse Roach, Interim Public Utilities Director JR

Subject: Engineering Design Plans of an Aerated Static Pile Sludge Composting Process

Vendor Name: HDR Engineering, Inc.

Munis Vendor Number: 2722

ITEM AND ISSUE:

The Public Utilities Department respectfully requests your review and approval of a Professional Services Contract in the total amount of $339,388.00 including gross receipt tax for Engineering Design Services for a term of Four Years from the date of approval with HDR Engineering, Inc.

1. Request for Approval of a Budget Adjustment Resolution (BAR) in the Total Amount of $339,338.00 from Wastewater Enterprise fund to WIP Design.

CONTRACT NUMBER:

The FY25 Munis contract number is 3250199.

BACKGROUND AND SUMMARY:

The Wastewater Management Division composts stabilized residual sewage sludge to produce a marketable product that is sold to the public. The facility currently uses a windrow composting method that relies on diffusion of air through the piles for processing. Conversion to an Aerated Static Pile Composting process, which forces air through the piles to increase the processing rate, would allow the processing of more stabilized sludge, reducing the mass of sludge that must be landfilled.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Enterprise Fund /500

Munis Org Name/Number: Wastewater Capital Projects/5000375

Munis Object Name/Number: WIP Design/572960

Budget Officer / Designee: Andy Hopkins **Date:** 02/26/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

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

RFP 24008 was released on February 29, 2024, and closed on April 11, 2024. One bid was received from HDR Engineering, Inc.

Chief Procurement Officer (CPO) / Designee: _____ **Date:** 02/28/2025

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Construction to City Facilities, Furniture, and/or Fixtures included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Is this an externally funded purchase? ☐ Yes | ☒ No

If yes, what is the issuing agency: _____

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Is this a Capital Asset or Project? ☐ Yes | ☒ No

Project Ledger Number: _____

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

ATTACHMENTS:

Horizons declination
CPO Service Determination Email
Procurement document: RFP
Certificate of Liability Insurance
Professional Services Contract

Item #: _____
Munis Contract #: 3250199
RFP #: 240008

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

AERATED STATIC PILE COMPOSTING ENGINEEERING DESIGN PROJECT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **HDR Engineering, 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 13-1-111and

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 Contractor shall prepare and provide engineering plans and technical specifications to allow the conversion of the area within the existing compost building for aerated static pile composting as described in Exhibit A.

2. Standard of Performance; Licenses

A. The Contractor does hereby accept its designation as a professional service, rendering services related to Engineering design and management 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.

C. The Contractor shall provide its services in accordance with the ordinary standard of professional care applicable to members of Contractor's profession providing the same services under the same or similar circumstances at the same time and locality. The Contractor makes no warranties of any kind or nature, express or implied herein, in connection with the Contractor's services.

3. Compensation

A. **The total amount payable to the Contractor under this Contract, including gross receipts tax and expenses, shall not exceed $339,388.00 (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 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, except to the extent City was not prejudiced by such delay to invoice.

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 21 days after the City's receipt of invoice. 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 in four **(4) years from date of final signature** unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (Appropriations).

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) 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 which notice shall (i) identify all the Contractor's material breaches of this Contract upon which the termination is based and (ii) state what the Contractor must do to cure such material breaches. City's notice of termination shall only be effective (i) if the Contractor 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 Consultant does not, within the thirty (30) day notice period, notify the City of its intent to cure and begin with due diligence to cure the material breach.

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 for payment 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

Upon payment in full of undisputed amounts to Contractor, 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. Any modification or reuse of Contractor's materials by City for purposes other than those described in this Contract shall be at City's sole risk and without liability to 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 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 **RFP 240008,** 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. Professional Liability Insurance

Contractor shall maintain professional liability insurance throughout the term of this Contract providing 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 of $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 coverage and limits specified in this Contract. 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 required herein. No representation is made that the 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.

23. Records and Financial Audit

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of time-based fees and reimbursable expenses invoiced 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 upon reasonable written notice. 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, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including reasonable attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the negligent or wrongful acts or omissions of the indemnitor or its officers, employees or agents. In the event that any action, suit or proceeding related to the negligent or wrongful acts or omissions of the Contractor or any of its 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) business 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: P. Fred Heerbrandt, P.E.
73 Paseo Real
Santa Fe, NM 87507
pfheerbrandt@santafenm.gov

To the Contractor: HDR Engineering, Inc.
Chris Rodriguez, Office Principal/Associate Vice President
2155 Louisiana Blvd. NE, Suite 3000
Albuquerque, NM 87110
chris.rodriguez@hdrinc.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 reasonable direct costs and/or 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 may 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 right to seek 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 seek 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 reasonable 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, MAYOR

CONTRACTOR:
HDR Engineering, Inc

_____
Aaron Meilleur, PE, Senior Vice President

DATE: Feb 18, 2025

ATTEST:

NMBTIN: 02154898006

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 18, 2025 11:16 MST)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
FINANCE DIRECTOR

EXHIBIT A

December 19, 2024

Mr. Fred Heerbrandt, P.E.
Engineer Supervisor Wastewater
City of Santa Fe
73 Paseo Real
Santa Fe, NM 87507

RE: Revised Proposal for Engineering Services for Paseo Real Wastewater Reclamation Facility (PRWRF) Aerated Static Pile (ASP) Composting Facility Improvements

Dear Mr. Heerbrandt,

HDR Engineering, Inc. (HDR) appreciates the opportunity to submit this revised proposal to provide engineering services for the Paseo Real Wastewater Reclamation Facility (PRWRF) Aerated Static Pile (ASP) Composting Facility Improvements project based on our conversations and email correspondences. As discussed, the City's intent is to modify the existing windrow composting process with an ASP process within the exiting compost building to improve composting efficiency.

Scope of Services

HDR will provide professional engineering services for the design, bidding, and engineering services during construction to convert the biosolids composting process from windrow to aerated static pile.

Project Management and Quality Assurance/Quality Control (QA/QC)

HDR will perform project coordination and management throughout the project which will include the following:

- Monitoring of the project scope of services, budget, and schedule
- Management and coordination of HDR team members
- Coordination with Town and Operations Staff
- Implementation of HDR's QA/QC program consisting of quality control reviews of technical deliverables by senior technical staff
- Preparation of monthly invoices

This task will also include a kick-off/concept design meeting with the City to review the project scope, schedule, and review of existing facility. HDR will prepare agenda and meeting summary notes.

Task 1 – ASP Composting Evaluation

HDR will perform an evaluation of the proposed ASP composting process and compare against the existing windrow process. The evaluation will include analysis of historical operations data to evaluate biosolids production, summary of regulatory requirements, assessment of feedstock, conceptual layout, evaluate up to three ASP technologies, and conceptual opinion of probable construction costs. The evaluation will be summarized in a technical memorandum and will be used as the basis of design for the proposed improvements.

Deliverables

Design deliverables will consist of the technical memorandum and supporting appendices. HDR will provide an electronic PDF copy for each of the following deliverables:

- Draft Technical Memorandum
- Final Technical Memorandum

Task 2 – Design Services

HDR will proceed with the design phase for the proposed improvements after completion of the evaluation phase. The design scope of work includes preparation of design drawings and associated technical specifications to be used for bidding and construction of the proposed improvements. A preliminary sheet list anticipated for the project is summarized below.

Preliminary Drawing Sheet List

Sheet No.	Description
G000	Cover Sheet and Index of Drawings
G001	General Notes
G002	Abbreviations
G003	General Legend
G004	Process Mechanical / Piping Legend
G005	Electrical Legend
G006	Instrumentation Legend
C001	Existing Overall Site Plan
D101	Overall Composting Facility Plan
D102	Enlarged Composting Facility Plan
D301	Composting Facility Sections
D302	Composting Facility Sections and Details
D303	Composting Facility Details
E101	Overall Composting Facility Electrical Plan
E102	Enlarged Composting Facility Electrical Plan
E103	Electrical One-Line Diagrams
E104	Electrical Panel Schedule

Sheet No.	Description
E105	Electrical Details
Y601	Instrumentation Composting Facility P&ID
Y602	Instrumentation One-Line Diagram
Y603	Instrumentation Details

Deliverables

Design deliverables will consist of contract documents, technical specifications, and engineer's opinion of probable construction costs. HDR will provide an electronic PDF copy for each of the following deliverables:

- Preliminary 60% Design Progress Submittal
- Pre-Final 90% Design Progress Submittal
- Final Design Package

HDR will attend two design review meetings with City staff for the 60% and 90% submittals which will be held virtually.

Task 3 – Bidding Services

Upon approval of the final plans and specifications, HDR will assist the City with receiving bids for the construction of the project. HDR will provide bidding assistance to the City and complete the following:

- Conduct Pre-Bid Conference
- Provided responses to contractor questions regarding design plans and technical specifications and prepare up to two addenda to distribute to bidders.
- Bid Opening and Tabulation will be prepared by the City. HDR will review bid tabulation and Recommendation of Award.

Task 4 – Engineering Services during Construction

During the construction phase of the project, HDR will provide the following engineering services during construction:

- Attend one Pre-Construction Conference and Prepare Meeting Notes
- Review up to 20 Shop Drawing and Operations and Maintenance Manual Submittals
- Review up to 10 Requests for Information (RFI's)
- Review up to 2 Contractor Change Requests (as required)
- Conduct virtual bi-weekly construction coordination meetings
- Review Contractor Pay Applications
- Attend one final walkthrough, prepare punch list, and prepare notice of substantial completion
- Coordinate with City Contractor's equipment start-up and training plans prepared by equipment manufacturer.

- Prepare record drawings based on Contractor provided as-built redlines

Contingency Allowance

A contingency allowance is reserved for unforeseen engineering services not included or anticipated in the scope of services described previously but may be authorized by the City after the evaluation phase.

Assumptions

Sope of services is based on the following assumptions:

- Scope of services only includes evaluation of ASP composting process. No other biosolids composting technologies will be considered.
- Scope of Services for design and engineering services during construction is based on ASP process with positive aeration system with no odor control or air scrubbing. Aeration system will be supplied by air supply fans located inside the existing compost building.
- Scope of Services does not include any structural modifications to the existing compost building structure and slab. Composting bin walls will consist of precast concrete bin blocks, composting bin floors will be a removable flooring system such as hollow-core precast concrete planks without any structural modifications.
- Scope of services does not include any modifications to existing building plumbing and ventilation system.
- Scope of Services does not include any Surveying or Geotechnical Engineering Services. All work will be within the existing composting facility.
- Engineer's Opinion of Probable Construction Cost (EOPCC) will be based on pricing obtained from vendors and suppliers at the time of preparation. EOPCCs will be updated at each design submittal and prior to bidding. HDR will have no control of the accuracy from the final EOPCC prepared to the actual construction bid prices received during bidding.
- Fee estimate for engineering services during construction is based on an estimated 4 months of actual construction without any structural modifications to the existing compost building.
- Fee estimate for part time construction observations services is based on an estimated 4 months of actual construction. A total of 32 site visits will be performed, twice a week for 16 weeks.
- Front end documents required for bidding will be prepared by the City. HDR will provide the bid form with quantities to be included with the front end bidding documents.
- Bid advertisement and the bidding process will be completed and managed by the City. HDR will provide electronic files in PDF format to the City for bidding.
- Document control during construction is not included in the scope of services and shall be performed by the Construction Contractor.

- HDR will not control or have charge of, and will not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work.
- The Construction Contractor shall be responsible for the development and implementation of the SWPPPs and any associated monitoring and reporting.
- HDR's scope of services does not include any warranty or construction claims reviews or associated dispute resolution.

Estimated Fee

HDR will provide the services described for a total fixed price fee excluding New Mexico Gross Receipts Tax as summarized below.

Description	Estimated Fee
Task 1 - ASP Evaluation	$ 51,500
Task 2 – Design Services	$ 120,620
Task 3 – Bidding Services	$ 13,825
Task 4 – Engineering Services During Construction	$ 77,712
Contingency Allowance	$ 50,000
Total Estimated Fee	**$ 313,657**

Estimated Project Schedule

The actual date for the meeting will be determined in coordination with the City. A detailed project schedule for the remainder of the project including the design phase and construction phases of the project will be developed in coordination with the City.

Please do not hesitate to contact our Project Manager, Wade Chacon, at (505) 830-5457 if you have any questions or need additional information. We look forward to continuing our positive working relationship with you on this project.

Sincerely,

HDR Engineering, Inc.

Aaron Meilleur, PE
Senior Vice President, Area Manager

Wade Chacon, PE
Senior Project Manager

City of Santa Fe - Professional Services Contract - HDR - Final CAO vs3-with Exhibit A

Final Audit Report 2025-02-18

Created:	2025-02-17
By:	Amy Cawthon (amcawthon@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAADvFAdQgOc1ThnLWIPpgk1K4C76QJzaCt

"City of Santa Fe - Professional Services Contract - HDR - Final CAO vs3-with Exhibit A" History

Document created by Amy Cawthon (amcawthon@santafenm.gov)
2025-02-17 - 7:18:22 PM GMT- IP address: 63.232.20.2

Document emailed to Aaron Meilleur (aaron.meilleur@hdrinc.com) for signature
2025-02-17 - 7:19:17 PM GMT

Email viewed by Aaron Meilleur (aaron.meilleur@hdrinc.com)
2025-02-17 - 9:15:39 PM GMT- IP address: 104.47.59.254

Document e-signed by Aaron Meilleur (aaron.meilleur@hdrinc.com)
Signature Date: 2025-02-18 - 6:15:15 PM GMT - Time Source: server- IP address: 50.115.87.146

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2025-02-18 - 6:15:17 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2025-02-18 - 6:15:55 PM GMT- IP address: 76.127.1.192

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2025-02-18 - 6:16:28 PM GMT - Time Source: server- IP address: 76.127.1.192

Agreement completed.
2025-02-18 - 6:16:28 PM GMT

Powered by Adobe Acrobat Sign

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Utilities/Wastewater	8/28/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP DESIGN	5000375	572960		$ 339,388	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 339,388	$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo
To increase WIP Design from Wastewater Enterprirse fund for HDR ENGINEERING ,INC. Please when posting add vendor name….

please see memo for more detail

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(339,388)
TOTAL:	**(339,388)**

Linda MacAllister — 2/20/2025
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Feb 21, 2025 — Date

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 — 02/26/2025
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 05/09/2024

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 Willis Towers Watson Midwest, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: WTW Certificate Center PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378 E-MAIL ADDRESS: certificates@wtwco.com
INSURED HDR Engineering, Inc. 1917 South 67th Street Omaha, NE 68106	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : Liberty Mutual Fire Insurance Company 23035 INSURER B : Ohio Casualty Insurance Company 24074 INSURER C : Liberty Insurance Corporation 42404 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** W33526354 **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 [X] Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2-641-444950-034	06/01/2024	06/01/2025	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 $ 1,000,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-444950-044	06/01/2024	06/01/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
B	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0	Y	Y	EUO(25)57919363	06/01/2024	06/01/2025	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: No (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WA7-64D-444950-014	06/01/2024	06/01/2025	[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)

Certificate Holder is named as Additional Insured on General Liability, Automobile Liability and Umbrella/Excess Liability on a Primary, Non-contributory basis where required by written contract. Waiver of Subrogation applies on General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation where required by written contract and as permitted by law. Umbrella/Excess policy is follow form over General Liability, Auto Liability and Employers Liability.

CERTIFICATE HOLDER

City of Santa Fe, NM
Attn: Paul Heerbrandt
200 Lincoln Ave.
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

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

AGENCY Willis Towers Watson Midwest, Inc.	NAMED INSURED HDR Engineering, Inc. 1917 South 67th Street Omaha, NE 68106
POLICY NUMBER See Page 1	
CARRIER See Page 1 / NAIC CODE See Page 1	EFFECTIVE DATE: See Page 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Project: City of Santa Fe Paseo Real Wastewater Reclamation Facility UV Disinfection Project; RFP #23/07/P.

Additional Insureds and Waiver of Subrogation: City of Santa Fe their officials, officers, employees and agents.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s): **All locations owned by or rented to the Named Insured**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which can be attributed only to operations at a single designated "location" shown in the Schedule above:

1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule above.

4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.

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B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which cannot be attributed only to operations at a single designated "location" shown in the Schedule above:

1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and

2. Such payments shall not reduce any Designated Location General Aggregate Limit.

C. 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, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.

D. For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

E. The provisions of Section **III** – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

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Policy Number: TB2-641-444950-034

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s): **All construction projects not located at premises owned, leased or rented by a Named Insured**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.

4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

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B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and

2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

C. 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, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or 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.

E. The provisions of Section **III** – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Any person or organization with whom you have agreed through written contract, agreement or permit to provide additional insured coverage	All locations as required by a written contract or agreement entered into prior to an "occurrence" or offense

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Any person or organization to whom or to which you are required to provide additional insured status in a written contract, agreement or permit except where such contact or agreement is prohibited.	Any location where you have agreed, through written, contract, agreement, or permit, to provide additional insured coverage for completed operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):
As required by written contract or agreement.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

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Policy Number TB2-641-444950-034
Issued by Liberty Mutual Fire Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Section IV – Conditions 4. Other Insurance and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed prior to a loss, that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

(3) This insurance is excess over any other insurance available to the additional insured for which it is also covered as an additional insured by attachment of an endorsement to another policy providing coverage for the same "occurrence", claim or "suit".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name Of Person(s) Or Organization(s):
As required by written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

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Policy Number: AS2-641-444950-044
Issued by: Liberty Mutual Fire Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED - NONCONTRIBUTING

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage form.

Schedule

Name of Person(s) or Organizations(s):
Any person or organization where the Named Insured has agreed by written contract to include such person or organization

Regarding Designated Contract or Project:
Any

Each person or organization shown in the Schedule of this endorsement is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

The following is added to the **Other Insurance Condition:**

If you have agreed in a written agreement that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the agreement was executed prior to the "bodily injury" or "property damage", then this insurance will be primary and we will not seek contribution from such insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
Any person or organization for whom you perform work under a written contract of the contract requires you to obtain this agreement from us but only if the contract is executed prior to the injury or damage occurring.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a c ontract with that person or organization.

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Where required by contract or written agreement prior to loss.

Issued by:Liberty Insurance Corporation

For attachment to Policy No WA7-64D-444950-014 Effective Date 06/01/2024 Premium
$

Issued to:HDR Engineering, Inc.

© 1983 National Council on Compensation Insurance, Inc.

Policy Number TB2-641-444950-034
Issued by Liberty Mutual Fire Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR MATERIAL REDUCTION IN COVERAGE TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART
MOTOR CARRIER COVERAGE PART
GARAGE COVERAGE PART
TRUCKERS COVERAGE PART
EXCESS AUTOMOBILE LIABILITY INDEMNITY COVERAGE PART
SELF-INSURED TRUCKER EXCESS LIABILITY COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
COMMERCIAL LIABILITY – UMBRELLA COVERAGE FORM

Schedule		
Name of Other Person(s) / Organization(s):	**Email Address or mailing address:**	**Number Days Notice:**
As required by written contract or written agreement	As required by written contract or written agreement	30

A. If we cancel this policy for any reason other than nonpayment of premium, or make a material reduction in coverage, we will notify the persons or organizations shown in the Schedule above. We will send notice to the email or mailing address listed above at least 10 days, or the number of days listed above, if any, before the cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.

B. This advance notification of a pending cancellation or material reduction of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

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Policy Number AS2-641-444950-044
Issued by Liberty Mutual Fire Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR MATERIAL REDUCTION IN COVERAGE TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART
MOTOR CARRIER COVERAGE PART
GARAGE COVERAGE PART
TRUCKERS COVERAGE PART
EXCESS AUTOMOBILE LIABILITY INDEMNITY COVERAGE PART
SELF-INSURED TRUCKER EXCESS LIABILITY COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
COMMERCIAL LIABILITY – UMBRELLA COVERAGE FORM

Schedule		
Name of Other Person(s) / Organization(s):	**Email Address or mailing address:**	**Number Days Notice:**
As required by written contract or written agreement		30

A. If we cancel this policy for any reason other than nonpayment of premium, or make a material reduction in coverage, we will notify the persons or organizations shown in the Schedule above. We will send notice to the email or mailing address listed above at least 10 days, or the number of days listed above, if any, before the cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.

B. This advance notification of a pending cancellation or material reduction of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

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NOTICE OF CANCELLATION TO THIRD PARTIES

A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule below. We will send notice to the email or mailing address listed below at least 10 days, or the number of days listed below, if any, before cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.

B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

Schedule

Name of Other Person(s) / Organization(s):	Email Address or mailing address:	Number Days Notice:
As required by written contract or agreement		**30**

All other terms and conditions of this policy remain unchanged.

Issued by Liberty Insurance Corporation

For attachment to Policy No. WA7-64D-444950-014 Effective Date 06/01/2024 **Premium $**

Issued to HDR Engineering, Inc. **Endorsement No.**

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Services Offered to the City of Santa Fe (9.2023)

Approved:
These services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

- ADA Accessibility Consulting Services
- Auctioneering Services
- Bulk Mailing and Sorting
- Call Center Services
- Computer Refurbishing
- Courier Services
- Decontamination, Sanitation and Sterilization Services
- Debris Removal
- Document Imaging
- Document Shredding
- Envelope Stuffing
- General Labor
- Hard Drive Destruction
- Janitorial and Housekeeping Services – Including Carpet Cleaning & Floor Care
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Meeting Minute Preparation Services
- Pest Control and Extermination Services
- Printing Services
- Rest Area Maintenance
- Screen Printing
- Snow Removal
- Yard, Grounds, and Lawn Maintenance

Permissive:
The services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.

- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT Support
- IT Security Services
- IT – Web Design
- IT – Web Programmer
- Marketing
- Social Media Marketing
- Training Services

For the complete State Use service list, please go to: http://horizonsofnewmexico.org/services.html

Signature: P. Fred Heerbrandt, P.E.
P. Fred Heerbrandt, P.E. (Feb 20, 2025 15:33 MST)

Email: pfheerbrandt@santafenm.gov

Outlook

RE: Engineering Design Services Determination - 24-31-P

From DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>

Date Mon 8/14/2023 10:37 AM

To HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>; DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>; GUNTER, RAYMOND S. <rsgunter@santafenm.gov>; LOVATO, JOANN D. <jdlovato@santafenm.gov>; SANCHEZ, KATHY S. <kssanchez@santafenm.gov>

Greetings,

The scope of work as written would be PROFESSIONAL SERVICES. Please note this determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, and the Procurement Manual.

1. The procurement shall be conducted as an RFP. Being that this is for Engineering Services, the RFP should not include the evaluation of cost.
2. While this scope of work has been determined to be Professional Services, please check with WorkQuest dba Horizons of New Mexico (mloehman@horizonsofnewmexico.org). The scope of work must be offered to WorkQuest dba Horizons of New Mexico for their right of first refusal.
3. Please ensure that the appropriate templates and forms are used. https://intranet.santafenm.gov/finance_1
4. When processing this procurement, please ensure that this number (**24-31-P**) and the procurement name are used in the appropriate documents and the subject of emails.
5. Please keep this as part of the procurement file for future reference.
6. Figure out your funding source and **inform Purchasing**. To ensure that the proper documents and language are used, it is important to identify the funding source for the subsequent agreement. For instance, if federal funds are involved, the procurement request and subsequent contract must include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.

- ✓ Federal
- ✓ State
  - ✓ Federal Passthrough
  - ✓ Capital Outlay
  - ✓ Other Appropriations
- ✓ Local/General Fund
- ✓ Other Restricted
  - ✓ Foundation
  - ✓ Donation

6. Please review the pages linked below to determine whether any of the existing agreements are applicable to this request. You might be able to use an existing agreement to save time and money.

    - https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements/
    - https://naspovaluepoint.org/categories/

    - https://www.omniapartners.com/publicsector/contracts
    - https://www.buyboard.com/home.aspx
    - https://www.h-gac.com/Home
    - https://www.gsaelibrary.gsa.gov/
    - https://www.sourcewell-mn.gov/contract-search

    - https://eprocurement.ces.org/public/bluebook.html#

7. Send your request via MS Teams or via email:

    - RFP requests to https://teams.microsoft.com/l/channel/19%3ad63b9c8b586d424fa5eed34177146ac5%40thread.tacv2/RFP%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f

    - ITB requests to https://teams.microsoft.com/l/channel/19%3a48e1e4588c0440a09cfbd9b907ed42d4%40thread.tacv2/ITB%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f
    - Determination requests to purchasing_det@santafenm.gov
    - And all other requests to purchasing@santafenm.gov

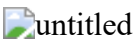
Thank you for submitting this scope of work for my review.

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



From: HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>
Sent: Monday, August 14, 2023 10:16 AM
To: Purchasing DET <purchasing_det@santafenm.gov>
Subject: Engineering Design Services Determination

Scope of Work

The Wastewater Management Division is seeking an engineering design of an Aerated Static Pile composting process facility within the Division's existing windrow composting building. The Wastewater Management Division composts residual solids from the wastewater treatment process with ground yard wastes (wood chips). The engineering company that is awarded the project will prepare and provide engineering plans and technical specifications to allow a contractor to convert the area within the existing compost building for aerated static pile composting.
Tasks included in this design project include:

1. **Design Phase**
   - Production of a technical memo reviewing the operational, regulatory, and financial limitations/benefits of Static Pile Composting vs Windrow Composting.
   - Production of a technical memo reviewing the proprietary aerated static pile systems available as well as an in-house design concept. Wastewater Management Division staff will make a selection of the desired system design from a review and discussion of this document.
   - Production of 60%, 90%, and 100% construction plan sets for review by the designated Wastewater Management Division staff. The 100% plans shall be suited for use in an Invitation to Bid on the designed improvements.
   - Production of 60%, 90%, and 100% Technical Specifications for review by the designated Wastewater Management Division staff. The 100% Technical Specifications shall be prepared for use with an Invitation to Bid on the designed improvements.
   - Production of an Opinion of Construction Cost at the 60% and 100% design stage.
   - Production of electronic copies of the final design drawings and specifications in .pdf and .dwg formats.

2. **Bid Phase**
   - Prepare up to 2 addenda.
   - Develop a QA/QC program specification to be included in the bid documents.
   - Distribute bid documents digitally through the City of Santa Fe web site.
   - Conduct a pre-bid meeting.
   - Prepare a bid tabulation and analysis of the Low Offerer's qualifications. Make a recommendation for award of the contract.

3. **Construction Phase**
   - Conduct a preconstruction meeting with the awarded contractor, City staff, and construction manager.
   - Provide part-time (10 hours per week) construction observation services.

- Conduct weekly construction meetings online.
- Review invoices and recommend payment based on contractor completion claims.
- Issue notice of substantial completion and a final punchlist for completion of the construction project.
- Coordinate equipment start-up and training with contractor and equipment manufacturers.
- Review and approve a operation and maintenance manual for the overall system designed and constructed.

P. Fred Heerbrandt, P.E.
Engineer Supervisor Wastewater
City of Santa Fe
505-955-4623
pfheerbrandt@santafenm.gov

CITY OF SANTA FE

The Purchasing Memo

Date: February 21, 2025

To: Governing Body

Via: Regina Wheeler, Public Works Department Director RW RW (Feb 24, 2025 09:46 MST)

From: Romella Glorioso-Moss, Complete Streets Capital Projects Manager

Subject: Name Change from WH Pacific to NV5 Inc.

ACTION:

Request for Approval of Amendment #1 to the Professional Services Agreement #24-0505 with WH Pacific Inc. to Reflect Company's Name Change to NV5 inc. (Romella Glorioso-Moss, Complete Streets Capital Projects Manager, rsglorioso-moss@santafenm.gov)

CONTRACT NUMBER:

The FY25 Munis contract number is 3250010.

BACKGROUND AND SUMMARY:

WH Pacific, Inc's. original Professional Services Agreement Item#24-0505 for on-call engineering services, including construction management, was approved by the Governing Body on August 14, 2024. On December 28, 2024, WH Pacific, Inc. merged with NV5, Inc. and the merged company name is NV5.

The professional engineers from WH Pacific who are currently working on two state-funded roadway projects will remain the design engineers for these projects. Hence, there is no huge impact to the quality of work, budget, and project completion due to this merger and name change.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Various

Munis Org Name/Number: Various

Munis Object Name/Number: Various

Budget Officer / Designee:_____ **Date:**_____

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-111, RFP #24001.

Chief Procurement Officer (CPO) / Designee: **Date:** _____

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Construction to City Facilities, Furniture, and/or Fixtures included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Is this an externally funded purchase? ☐ Yes | ☒ No

If yes, what is the issuing agency: _____

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Is this a Capital Asset or Project? ☐ Yes | ☒ No

Project Ledger Number: _____

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

ATTACHMENTS:

Original contract packet
Amendment #1
Certificate of Liability Insurance (COI)

Halona Crowe

Item# 24-0505
Munis Contract#3250010
RFP# 24001

CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM# 24-0505

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated August 19, 2024 (the "Agreement"), between the City of Santa Fe (the "City") and NV5, Inc. formerly known as WHPacific, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor, whichever occurs last.

RECITALS:

A. Per the attached Exhibit A – *Agreement and Plan of Merger*, an Agreement of Merger has been entered into between NV5, Inc., a California corporation with California Entity Number 1015797 (the "Acquiror") and WHPacific, Inc., an Alaska corporation (herein "Merging Corporation") with Alaska Entity No. 97747 and with California Foreign Entity No. 3284233.

B. The Merger has become effective on December 28, 2024 (the "Effective Time").

C. The Merger has the effects set forth in the Corporations Code, including without limitation the generality of the foregoing, from the Effective Time: (i) all the properties, rights, privileges, immunities, powers and franchises of the Corporation, and (ii) all debts, liabilities, obligations and duties of the Corporation shall become the debts, liabilities, obligations and duties of the Acquiror, as the Surviving Corporation.

D. Pursuant to Article 14 of the Agreement, and for good and valuable consideration,

the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. Contractor

"Contractor" as defined on page 1 of the original Agreement shall henceforth refer to NV5, Inc., in every instance.

2. NOTICES.

Article 28 of the Agreement, Notice to the Contractor is hereby amended as follows:

To the Contractor: Jonathan Peña, PE, Operations Manager, NV5, Inc., 6501 Americas Parkway NE Suite 400, Albuquerque, NM 87110, Jonathan.Pena@nv5.com.

3. AGREEMENT 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:

Jonathan Pena
Jonathan Pena (Jan 30, 2025 17:45 MST)
JONATHAN PEÑA, PE
OPERATIONS MANAGER

DATE: Jan 30, 2025

NMBTIN 03-32665400-9

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jan 30, 2025 23:41 MST)
KEVIN NAULT
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
EMILY OSTER, FINANCE DIRECTOR

EXHIBIT A

AGREEMENT AND PLAN OF MERGER

This Agreement of Merger is entered into between NV5, Inc., a California corporation, with California Entity Number 1015797 (the "**Acquiror**"), and WHPacific, Inc., an Alaska corporation (herein "**Merging Corporation**") (the "**Corporation**"), with Alaska Entity Number 97747 and with California Foreign Entity No. 3284233.

For Office Use Only
-FILED-
File No.: BA20242247573
Date Filed: 12/20/2024

WHEREAS, the respective Boards of Directors of the Acquiror and the Corporation have each approved and adopted this Agreement and the transactions contemplated by this Agreement, in each case after making a determination that this Agreement and such transactions are advisable and fair lo, and in the best interests of, such corporation and its stockholders: and

WHEREAS, pursuant to the transactions contemplated by this Agreement and on the terms and subject to the conditions set forth herein, the Corporation, in accordance with the California Corporations Code (the "**Corporations Code**"), will merge with and into the Acquiror, with the Acquiror as the surviving corporation (the "**Merger**").

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Merger.** Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Corporations Code, the Corporation shall be merged with and into the Acquiror at the Effective Time (as hereinafter defined). Following the Effective Time. The separate corporate existence of the Corporation shall cease, and the Acquiror shall continue as the surviving corporation (the "**Surviving Corporation**"). The effects and consequences of the Merger shall be as set forth in this Agreement.

2. **Effective Time.**

(a) Subject to the provisions of this Agreement, on the date hereof, the parties shall duly prepare, execute and file a certificate of merger (the "**Certificate of Merger**") complying with Section of the Corporations Code with the Secretary of State of the State of California with respect to the Merger. The Merger shall become effective on December 28, 2024 (the "**Effective Time**").

(b) The Merger shall have the effects set forth in the Corporations Code, including without limitation the generality of the foregoing, from the Effective Time: (i) all the properties, rights, privileges, immunities, powers and franchises of the Corporation shall vest in the Acquiror, as the Surviving Corporation, and (ii) all debts, liabilities, obligations and duties of the Corporation shall become the debts, liabilities, obligations and duties of the Acquiror, as the Surviving Corporation.

3. **Organizational Documents.** The by-laws of the Acquiror in effect at the Effective Time shall be the by-laws of the Surviving Corporation until thereafter amended as provided therein or by the Corporations Code, and the certificate of incorporation of the Acquiror in effect at the Effective Time, as amended pursuant to the Certificate of Merger, shall be the certificate of

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incorporation of the Surviving Corporation until thereafter amended as provided therein or by the Corporations Code.

4. **Directors and Officers.** The directors and officers of the Acquiror immediately prior to the Effective Time shall be the directors of the Surviving Corporation from and after the Effective Time and shall hold office until the earlier of their respective death, resignation or removal or their respective successors are chilly elected or appointed and qualified in the manner provided for in the certificate of incorporation and by-laws of the Surviving Corporation or as otherwise provided by the Corporations Code.

5. **Conversion of Securities.** At the Effective Time, by virtue of the Merger and without any action on the part of the Acquiror or the Corporation or the holders of shares of capital stock of the Corporation:

(a) each share of common stock of the Corporation, (the "**Corporation Common Stock**"), issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and non-assessable share of common stock, of the Surviving Corporation (the "**Surviving Corporation Common Stock**");

(b) each share of Corporation Common Stock that is owned by the Acquiror or the Corporation (as treasury stock or otherwise) will automatically be canceled and retired and will cease to exist, and no consideration will be delivered in exchange therefor; and

(c) each share of capital stock of Acquiror issued and outstanding immediately prior to the Effective Time shall remain outstanding following the consummation of the Merger.

6. **Stock Certificates.** Upon surrender by the stockholders of the Corporation of the certificate or certificates (the "**Certificates**") that immediately prior to the Effective Time evidenced outstanding shares of Corporation Common Stock to Acquiror for cancellation, together with a duly executed letter of transmittal and such other documents as Acquiror shall require, the holder of such Certificates shall be entitled to receive in exchange therefor one or more shares of Surviving Corporation Common Stock representing, in the aggregate, the whole number of shares that such holder has the right to receive pursuant to Section 5 after taking into account all shares of Corporation Common Stock then held by such holder. Each Certificate surrendered pursuant to the previous sentence shall forthwith be canceled. Until so surrendered and exchanged, each such Certificate shall, after the Effective Time, be deemed to represent only the right to receive shares of Surviving Corporation Common Stock pursuant to Section 5, and until such surrender or exchange, no such shares of Surviving Corporation Common Stock shall be delivered to the holder of such outstanding Certificate in respect thereof.

7. **Entire Agreement.** This Agreement together with the Certificate of Merger constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, representations and warranties, and agreements, both written and oral, with respect to such subject matter.

8. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

10. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

11. **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights. remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 12th day of December, 2024.

NV5, INC.

By: _____
Name: Dickerson C. Wright
Title: Chief Executive Officer

By: _____
Name: MaryJo O'Brien
Title: Secretary

WHPACIFIC, INC.

By: _____
Name: Dickerson C. Wright
Title: Executive Vice President

By: _____
Name: MaryJo O'Brien
Title: Secretary

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OFFICERS' CERTIFICATE

OF APPROVAL OF

AGREEMENT OF MERGER

Dickerson Wright and MaryJo O'Brien certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of NV5, Inc., a California corporation with California Entity Number 1015797.

2. The principal terms of the Agreement of Merger in the form attached were duly approved by the board of directors and by the shareholders of the corporation by a vote that equaled or exceeded the vote required.

3. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.

4. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is 100.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Effective Date: December 28, 2024

Execution Date: December 12, 2024

Dickerson C. Wright
Chief Executive Officer

MaryJo O'Brien
Secretary

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OFFICERS' CERTIFICATE

OF APPROVAL OF

AGREEMENT OF MERGER

Dickerson Wright and MaryJo O'Brien certify that:

5. They are the Executive Vice President and the Secretary, respectively, of WHPacific, Inc., an Alaska corporation with Alaska Entity Number 97747 and California Foreign Entity No. 3284233.

6. The principal terms of the Agreement of Merger in the form attached were duly approved by the board of directors and by the shareholders of the corporation by a vote that equaled or exceeded the vote required.

7. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.

8. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is 1000.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Effective Date: December 28, 2024

Execution Date: December 12, 2024

Dickerson C. Wright
Executive Vice President

MaryJo O'Brien
Secretary

Item #: 24-0505
Munis Contract #: _____
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 **WHPacific, 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 knowledge 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 the City identifies a need, the City 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 hours required to do the work and the parties will negotiate the tasks for each project on a project-by-project basis. The PE may also be required to do the project 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.

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

a. Phase 1 - Project Scoping

The PE will review available data, define 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; and
   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; and
         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 to determine 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 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. ENN Meeting
An 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) permit, 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 the "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, NPDES permits, 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) 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, 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: Jonathan Peña, PE, Albuquerque Operations Manager, WHPacific, Inc., 6501 Americas Parkway NE Suite 400, Albuquerque, NM 87110, Jonathan.Pena@nv5.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. <u>Default and Force Majeure</u>

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:
WHPacific, Inc

Jonathan Pena
Jonathan Pena (Jul 8, 2024 10:42 MDT)

JONATHAN PEÑA, PE
ALBUQUERQUE OPERATIONS MANAGER

DATE: Jul 8, 2024

CRS#: 03-122525-00-0

Registration #: 17632

ATTEST:

GERALYN CARDENAS
INTERIM CITY CLERK

GB MTG 08/14/2024

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jul 18, 2024 08:12 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

CERTIFICATE OF LIABILITY INSURANCE

5/1/2025 | DATE (MM/DD/YYYY) 5/1/2024

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 Lockton Companies 3280 Peachtree Road NE, Suite #1000 Atlanta GA 30305 (404) 460-3600	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED 1491108 WHPacific, Inc. NV5 Global, Inc., NV5, Inc. 200 South Park Road, Su Hollywood, FL 33021	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** Hartford Fire Insurance Company — 19682 **INSURER B :** Navigators Specialty Insurance Company — 36056 **INSURER C :** Twin City Fire Insurance Company — 29459 **INSURER D :** Everest Indemnity Insurance Company — 10851 **INSURER E :** National Fire and Marine Insurance Co — 20079 **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 17538462 **REVISION NUMBER:** XXXXXXX

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:	N	N	21 CSE S88600	5/1/2024	5/1/2025	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 $ 300,000 $ 15,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY	N	N	21 CSE S88601	5/1/2024	5/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 2,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX $ XXXXXXX
B	[X] UMBRELLA LIAB [X] OCCUR EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ $0	N	N	GA24EXRZ0DWT51C	5/1/2024	5/1/2025	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $ XXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	N	22 WE BE9P58	5/1/2024	5/1/2025	[X] PER STATUTE [ ] OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
D E A	Excess Liab Prof/Poll Liab Bus Per Prop	N	N	XC3EX00564-241 42-EPP-321328-03 22 UUN AF9909	5/1/2024 5/1/2024 5/1/2024	5/1/2025 5/1/2025 5/1/2025	Ea. Claim/Agg. $10M/$10M Ea. Claim/Agg. $10M/$20M Limit $20,415,609	

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

Excess/Umbrella policy follows form over underlying policies: General Liability, Auto Liability & Employers Liability (additional insured and waiver of subrogation apply).
Professional Liability - Claims made form, defense costs included within limit.

CERTIFICATE HOLDER

17538462
City of Santa Fe
200 Lincoln Ave
Santa Fe NM 87501

CANCELLATION See Attachments

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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Signature: XAVIER VIGIL (Aug 19, 2024 16:42 MDT)

Email: xivigil@santafenm.gov

CITY OF SANTA FE

Date: January 11, 2025

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

From: P. Fred Heerbrandt, P.E., Engineer Supervisor FH

Via: Jesse Roach, Acting Public Utilities Director JR

Subject: On Call General Electrical Services Contract

Vendor Name: Alive Electric, Inc.

Munis Vendor Number: 8046

ITEM AND ISSUE:

The Public Utilities Department, Wastewater Management Division respectfully requests your review and approval of a Construction Contract in the total amount of $150,000.00 per year, excluding NMGRT, for On Call General Electrical Services for a term of four (4) years with Alive Electric, Inc., for a total of $600,000.00 over the contract term, excluding NMGRT.

1.Request for approval of a Budget Amendment Resolution (BAR) in the total amount of $649,125.00 from the Wastewater Enterprise Fund/Fund 500 to fund the contract over the four year term.

CONTRACT NUMBER:

The FY25 Munis contract number is 3250311.

BACKGROUND AND SUMMARY:

The Paseo Real Wastewater Reclamation Facility utilizes many various types of rotating equipment and other electrically driven process equipment that need periodic preventative maintenance, repair, replacement, and/or expansion. This contract will assist in expediting this work by having a contract in place to provide this critical service. A total of three contracts will be awarded from this procurement.

Prior Approvals and Supporting Information:

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-102, ITB

ITB 25034 was opened on October 15, 2024 and closed on November 14, 2024. Four bids were received and three contracts will be awarded.

Chief Procurement Officer (CPO) / Designee: _____ **Date:** 03/04/2025
CPO Comment/Exceptions: ITB 25034

FUNDING SOURCE:

Fund Name/Number: Wastewater Enterprise Fund/Fund 500

Munis Org Name/Number: Wastewater Capital Projects - 5000375

Munis Object Name/Number: WIP Construction - 572970

Budget Officer / Designee: Andy Hopkins **Date:** 03/04/2025
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: ITB

Vendor's Bid

Construction Contract

Horizons declination
CPO Service Determination Email
Certificate of Liability Insurance (COI)
Contract
Rate Sheet
BAR

Item #: _____
Munis Contract #: 3250311
ITB #: 25034

CITY OF SANTA FE

CONSTRUCTION CONTRACT
On-Call General Electrical Services

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Alive Electric, 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.

1. Scope of Work

A. The Contractor shall perform the following work:

The electrical services will be at the Paseo Real Wastewater Reclamation Facility and other remote sites within the collection system. The work shall include, but not be limited to, installation of new power and lighting circuits; new power services; new electrical devices, equipment, and lighting fixtures; electrical repairs, rewiring, panel and wiring upgrades, inspections of electrical components, repair or replacement of equipment or fixtures, maintaining control systems, lighting systems, and communication systems. The work shall also include the removal and disposal of existing power circuits, lighting fixtures and equipment, and the termination of associated circuits and services. Any related work required to accomplish the requested electrical work is included. Low voltage work could be included and any other related electrical work. The Contractor is required to provide licensed electrical services in a professional manner on every task order given.

The City shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the electrical work required for the project. The Contractor shall be responsible for verification of all existing conditions, measurements, and dimensions for estimating.

Maintenance service calls to the City's Wastewater Reclamation Facility shall be scheduled at the convenience of both parties.

The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. The Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits. Alive Electric, Inc. does not have an electrical engineer on staff. Stamped drawings can be subcontracted out, at an extra fee.

The City shall be able to utilize this On-Call Contract as needed and as funding is available.

The award of this Contract is without assurance of quantity or dollar amount of work to be performed.

Wage Rates:

All work covered by this contract shall be in accordance with applicable City and state laws and is subject to the

minimum wage rate determination issued by the Department of Workforce Solutions (DWS), if applicable.

A wage rate decision is required by the Public Works minimum Wage Act for construction, demolition or renovation purposes on projects costing sixty thousand dollars ($60,000) or more. The Contractor agrees to comply with the current prevailing wage rate schedule when applicable. For current wage rates or for additional information, visit: http://www.dws.state.nm.us The City will request a wage rate determination from the DWS for each project that is $60,000 or more.

When submitting a quote for a specific project valued at more than sixty thousand dollars ($60,000) for any portion of a public works project that is subject to the New Mexico Public Works Act, the Contractor is required to be registered with the Labor and Industrial Division of the Department of Workforce Solutions prior to submitting its quote. The City may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

Other:
All work shall be in adherence to National Electrical Code (NEC), New Mexico Electrical Code (current adopted year), New Mexico Electrical Safety Code (current adopted year), New Mexico Administrative Code (NMAC), and Local Building Regulations including but not limited to the New Mexico Commercial Building Code (current adopted year), New Mexico Residential Building Code (current adopted year), Santa Fe Green Building Code, New Mexico Existing Building Code (current adopted year) for all projects. The Contractor shall be responsible for all permits associated with this work as required by the governmental Authority Having Jurisdiction (AHJ).

All work shall be in strict compliance with the city and state electrical codes.

Contractor shall be capable of providing all new or upgrades to the existing electrical service and systems, diagnostic services, perform trouble shooting services for the City, coordinate and supervise electrical services that may include renovations, upgrade, and improvement projects and to provide new electrical services. The Contractor shall prepare quotes for all costs and services needed to perform the work required, in compliance with the national and state electrical codes. The scope of an individual project may include equipment and fixtures whether attached or not to the building. It can include site and utility work. The utility work can include building power systems such as solar panels and geothermal systems. It may also include demolition and abatement projects. It can include security and other low voltage installations with related controls and equipment.

All material shall be new and of the highest quality available for the type of work being performed.

The City reserves the right to purchase materials directly from existing Statewide Price Agreements and other sources, and to provide these materials to the Contractor. The Contractor shall provide an itemized, quantifiable list of materials required for the project.

If the Contractor is requesting reimbursement for materials used on the work, copies of the invoices for the materials must be included when submitting invoices/pay applications.

The Contractor may add markups for the materials purchased.

The City reserves the right to procure specialty services directly from Statewide Price Agreements and other sources to provide to the awarded Contractor. Specialty services provided from Statewide Price Agreements and

other sources shall be coordinated by the Contractor.

The City reserves the right to obtain quotes from multiple vendors covered under this Contract and award a project to a contractor based on the quotes.

The City reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the City feel it is in its best interest to provide these extraordinary security services (at the City's expense).

The City reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security or wellbeing of the facility or any individual.

Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Contract. Any employee of the Contractor found in violation of any law, while on the City's property, will be prosecuted.

Contractor:
No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No contractor shall perform any work on a contract unless the Contractor has a valid Contractor's license issued by the CID to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety is important and enforced by the Contractor on site and will be periodically inspected by the City's qualified safety personnel. The Contractor shall comply with all local, state, and federal laws governing safety, health, and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The City shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property of the City in connection with the performance of the work covered by this Contract.

Any work involving disconnect or switching of electrical service to a work area shall follow the Occupational Safety and Health Act (OSHA) 29 CFR 1910.147 Standard pertaining to "Lockout/Tagout" procedures for hazardous energy.

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Contract. Journeymen level personnel shall have the ability and necessary skills to diagnosis problems and to make the appropriate decisions needed to provide these services.

The Contractor shall agree to provide the required labor within 48 hours and respond within 12 hours for emergency situations.

The contractor's price shall include labor costs, permits, overhead, profit, insurance, equipment, tools, and any other fees required to successfully complete the work requested. The Contractor shall be capable of providing a work force with supervision, adequate to perform work for a forty (40) hour work week during normal working hours with the option of working non normal or overtime hours if required. The Contractor shall be responsible

for all permits, fees, and State and/or City inspections associated with their work.

Replacement systems and related equipment shall meet current minimum “Energy Star” energy conservation standards.

Furnishing of submittal date for any/all new equipment and materials as well as O&M’s is required. Training of site personnel for the proper operation of newly installed equipment/systems and its related controls will be required for completion. This training will be acceptable to the person in charge of the facility and/or the City’s Project manager in charge of the project.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractor’s work, the contractor will be held responsible for repairing any damage done by his employees, subcontractors, and vendors. The Contractor shall restore any damage to existing and/or adjacent finishes damaged while performing work and to make new work inconspicuous with the existing adjacent finishes.

Contractor shall be responsible for adherence to the Contract Documents, Construction Documents, Specifications, and approved directives.

The Contractor and its employees agree to cooperate with and to abide by the rules and requirements of the City to not interfere with the daily operations of the City or to jeopardize the health, safety or welfare of the employees or general public conducting business with City.

Clean Up and Storage:

A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The City’s trash receptacles will not be used by the Contractor. Sanitary facilities will “not” be available at the job site. The contractor shall be responsible for the provision and maintenance of portable toilets.

B. The Contractor, daily, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, and surplus materials and shall then thoroughly clean the premises and the site to City 's satisfaction.

C. Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.

D. Storage of materials and construction equipment shall be coordinated with the City.

All hazardous and non-hazardous constructions debris shall be removed from the work areas and disposed of at an approved waste disposal site.

Task Order:

The Contractor shall be required to provide On-Call Electrical Services for any number of the activities listed under Scope of Work upon the request of the City. When a service is identified, the City shall provide, at a minimum, a detailed scope of work and/or drawings defining the work required. Each project will be individually described in a “Task Order”. The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied, or the Work used/operated and is turned over to City. Final completion is the date when the project is totally complete, the

punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Agreement will apply to all Task Orders.

Upon receiving the City's Task Order, the Contractor shall promptly visit the site and compare the scope of work and/or drawings to the existing conditions and provide all services called for in addition to the requirements set forth in this Agreement. The Contractor will be required to provide a written quote (based upon the rates submitted in the Bid Form) and cost summary to include the work to be performed and the amount of time required for the completion of the project and submit to the City at no cost to City. Project schedules, negotiated price, and completion dates shall be determined on a project-by-project basis and dependent upon the urgency of that task. Failure to respond to the City's requests may be grounds for termination of this Contract.

If any equipment or building system cannot be economically repaired or has reached the end of its life cycle, the Contractor shall justify with costs and other information the need for replacement. If replacement is recommended, the Contractor will provide written justification for system and/or the model, size and type of unit recommended along with any applicable efficiency data. The City's and energy standards will be discussed and taken into consideration when proposing replacement units or systems.

Change Orders:
Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated without a doubt there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by the City. Preventative measures shall be taken by both the contractor and City prior to issuing the Notice to Proceed. Such measures may include clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins. Alive Electric, Inc. would have to sub-out soil boring/soil tests (at an additional cost), if applicable

Other Construction Related Terms and Conditions:

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THE PURCHASE ORDER/CONTRACT.

Permits and Fees:
A. IF APPLICABLE- The Contractor shall secure and pay for the Electrical Permit, and Governmental fees, licenses and inspections for proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.

A. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the City upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. The Contractor shall deliver a photocopy of the Electrical Permit to the Design Professional and the City as soon as it is obtained.

Schedule, Progress Meetings and Reports:

A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the City's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.

B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the City.

C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues, and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.

D. The Contractor shall prepare a daily report each day the Contractor or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The City may request copies at any time. The reports may include:

1. report date and who prepared the report;
2. weather conditions – low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
3. companies present by name and their number of workers, work location, total man hours that day for each company;
4. equipment – type, source, units of work done, location of work, hour meter reading;
5. material brought to site – description, units, quantity, quality, location, time;
6. visitors to site – name, company, time;
7. safety concerns – company, contact, noticed by, work activity, safety issue, requirement, outcome: and
8. quality assurance and control – company, description of issue, specification section, issued by.

Close-out Requirements:

The Contractor shall submit to the City a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements. The punch list of incomplete or inadequate work shall also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:

a. Work associated with Punch List(s);
b. testing, balance, or performance operations complete and in agreement that associated work is in compliance with the Contract Documents;
c. one hard copy and one electronic copy in .pdf format of final approved test, balance, or performance report(s) complete with directory of contents submitted to the City;
d. as-Built drawings delivered in AutoCAD or electronic format;

e. written certification signed by the City of delivery and stocking of extra material (if applicable), equipment or components required by the Purchase Order at a location established by the City;
f. delivery of all warranties required by the Work;
g. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
h. completed Operations Liability insurance policy certificate, if applicable;
i. training of staff on all applicable building systems;
j. Not used
k. utility transfer to the City;
l. Operations and Maintenance Manuals;
m. a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

Materials and Parts:
Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to the City for which the work was provided.

The City requires that all materials shall be new and of the highest quality and at the best attainable price available for the type of work being performed.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with the City's approval

2. **Compensation**
A. The total amount payable to the Contractor under this Contract, excluding gross receipts tax and expenses, shall not exceed one hundred fifty thousand dollars ($150,000) per fiscal year, for a total of six hundred thousand dollars ($600,000) excluding gross receipts tax and expenses for the four (4) year term of this Contract. The City shall pay the applicable gross receipts tax. The applicable gross receipts tax shall be shown as a separate amount on each billing or request for payment made under the contract.

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 the date of final signature**.

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 task order is approved 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 task order. 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. Approval of a task order 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 task order; 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 task order.

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. Bonds, if required, to be furnished at an additional cost

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 Task Order as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the Project Manager, Andrew Hardinge, 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 Task Order;
2) Due date of any Deliverable, as outlined in the Task Order;
3) Compensation of any Deliverable, as outlined in the Task Order;
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 Task Order as described above, a Change Request shall be submitted that meets the following criteria:

1) The Contractor shall draft a written Change Request for review and approval by the Project 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; and request for a time extension (if required/applicable)
   (d) the reason and necessity for change;
   (e) the elements to be altered; and
   (f) the impact of the change.

2. The Project 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 Project Manager are final. Change Requests, once approved, become a part of the Task Order, and become binding as a part of the original Task Order.

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 **ITB #25034 – General Electrical Services,** 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 agrees to indemnify and hold harmless the City, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the contractor or its officers, employees or agents.

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:
Andrew Hardinge
73 Paseo Real
Santa Fe, NM 87507
aphardinge@santafenm.gov

To the Contractor:
Alive Electric, Inc.
April R. Montoya or Henry D. Sena
P. O. Box 23411
Santa Fe, NM 87502
april@aliveelectric.net; henry@aliveelectric.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. 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. 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:
Alive Electric, Inc.

April Montoya
April Montoya (Feb 11, 2025 14:20 MST)

Henry D. Sena, Pres. or
April R. Montoya, Vice Pres.

DATE: Feb 11, 2025

NMBTIN#: 03-139624-000

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 11, 2025 14:35 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

Bidder Instructions:

Items - Bidders should not add or delete items.

Approx. Qty. - Quantities provides are estimates, only, and do not establish a definite quantity contract. Actual quantities purchased under a resulting agreement may vary. Bidders may not change the Approx. Qty.

UOM (Unit of Measure) - Bidders should not change the UOM. Any variation from the UOM identified may be provided in the Comments.

Article and Description - Bidder should not change Article and Description. Any clarification, explanation, brand name identification, etc. must be provided in

Unit Price - Bidders must provide pricing that conforms with the identified Unit Price.

Comments - Bidders may only provide comments to explain or clarify an item, identify a brand name, or provide information as specifically stated in the corresponding ITB document. Changes and additions to the items, including variations in pricing for an item, are not permitted. Any comments that do not conform to the requirements in the ITB or on this form will be disregarded, and will not be included in the resulting award, if bidder is awarded.

Item	Approx. Qty.	UOM	Article and Description	Unit Price	Comments
			Wage Rates for Projects Under $60,000.00		
1	1	Hourly	Superintendent – Regular Hourly Rate	$	$ 85.00
2	1	Hourly	Superintendent – Overtime Hourly Rate	$	$ 127.50
3	1	Hourly	Journeyman or experienced worker – Regular Hourly Rate	$	$ 75.00
4	1	Hourly	Journeyman or experienced worker – Overtime Hourly Rate	$	$ 112.50
5	1	Hourly	Laborer – Regular Hourly Rate	$	$ 60.00
6	1	Hourly	Laborer – Overtime Hourly Rate	$	$ 90.00
			Wage Rates for Projects Over $60,000.00		
7	1	Hourly	Superintendent – Regular Hourly Rate	$	$ 100.00
8	1	Hourly	Superintendent – Overtime Hourly Rate	$	$ 150.00
9	1	Hourly	Journeyman or experienced worker – Regular Hourly Rate	$	$ 90.00
10	1	Hourly	Journeyman or experienced worker – Overtime Hourly Rate	$	$ 135.00
11	1	Hourly	Laborer – Regular Hourly Rate	$	$ 60.00
12	1	Hourly	Laborer – Overtime Hourly Rate	$	$ 90.00
			Other Rates		
13	1	Daily	Sanitary/toilet facilities, rental rates	$	$ 300.00
14	1	Rate/Mile	Travel Rate from the Contractors facility to the work site, pursuant to the New Mexico Per Diem and Mileage Act.	$	$ 0.70
15	1	Disc	Discount off parts	%	0%

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Utilities/Wastewater	2/11/2025

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WIP Construction	5000375	572970		$ 649,125	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 649,125	$ -

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

To transfer funds from WW enterprise cash fund to WIP Construction for ALIVE Electric, Inc. - ITB ON CALL

Please add vendor ALIVE when posting :)

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(649,125)
TOTAL:	**(649,125)**

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Linda MacAllister	2/11/2025	Andy Hopkins	03/04/2025
Prepared By *{print name}*	Date	Budget Officer	Date
	Feb 12, 2025		
Division Director Signature *{optional}*	Date	Finance Director *{≤ $5,000}*	Date
	Feb 13, 2025		
Department Director Signature	Date	City Manager *{≤ $60,000}*	Date

HEERBRANDT, PAUL F.

From: DUTTON-LEYDA, TRAVIS K.
Sent: Monday, March 6, 2023 1:46 PM
To: HEERBRANDT, PAUL F.
Cc: GUNTER, RAYMOND S.; Purchasing DET; CHAVEZ, JESSICA J.
Subject: RE: Determination Requested - On Call Electrical PUD

Fred:

Under NMSA 1978 13-1-52 I am making a determination of services. Based on NMSA 13-1-87 this falls in line with **"Service."** If the SOW should change, a new determination will be needed. As it has been determined that the totality of this project is more than $60K, an ITB or an RFP can be the formal solicitation method used. Please keep this as part of the procurement file for future reference.

Thank you.

Regards,

Travis Dutton-Leyda – CPO
Purchasing Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov
santafenm.gov

From: GUNTER, RAYMOND S. <rsgunter@santafenm.gov>
Sent: Monday, March 6, 2023 8:25 AM
To: Purchasing DET <purchasing_det@santafenm.gov>
Cc: CHAVEZ, JESSICA J. <jjchavez@santafenm.gov>
Subject: Determination Requested - On Call Electrical PUD

The Contractor shall perform the following work:

A. The contractor(s) shall provide professional and licensed electrical service, maintenance, and installation including but not limited to routine inspections, checking, cleaning, alignment, repair, troubleshooting, and adjustment of existing and future electrical and instrumentation systems until end of contract date.

1.) The location of these services shall include but is not limited to:
   a. Santa Fe Wastewater Treatment Facility and Remote Sites
   b. Canyon Road Water Treatment Facility and Remote Sites

c. Transmission and Distribution Main Office and Remote Sites

B. The contractor(s) shall provide the services outlined in Scope A to systems including but not limited to:

1.) Lighting
2.) Motors
3.) Controls
4.) Receptacles
5.) Conduit
6.) Panels

C. Such maintenance service shall include emergency calls. Parts shall be an additional cost to the city.
D. Contractor shall provide calibration sheets and job reports as it pertains to the work completed.
E. Maintenance service calls to the City's Wastewater Treatment Plant Facility shall be scheduled at the convenience of both parties.
F. Contractor shall furnish the City with a written report from contract after each service call.

3. **Compensation**

The four (4) year contract shall have a maximum total value of $400,000.00, with $100,000.00 allocated for each fiscal year, excluding NMGRT, beginning in FY 2023/2024. This contract will be utilized by the Public Utilities Department, with the following breakdown:
Amount Per Location

- Santa Fe Wastewater Treatment Facility: $80,000 Per Year
- Canyon Road Water Treatment Facility: $10,000 Per Year
- Transmission and Distribution Main Office: $10,000 Per Year

Raymond 'Scott' Gunter, CPO
Procurement Manager
Finance Department
Central Purchasing Office
City of Santa Fe
c. 505-469-8949
RSGunter@santafenm.gov

Client#: 1144104 ALIVEELE1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/12/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Isai Gomez	
USI Southwest Inc. NM - CL 4100 Osuna Road NE Suite 2-203 Albuquerque, NM 87109	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS: isai.gomez@usi.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : James River Insurance Company	12203
INSURED Alive Electric Inc. PO Box 23411 Santa Fe, NM 87502	INSURER B : Builders Trust of New Mexico	99999
	INSURER C : United Financial Casualty Company	11770
	INSURER D :	
	INSURER E :	
	INSURER F :	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X PD Ded:2,500 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	001465151	08/02/2024	08/02/2025	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 $5,000 $1,000,000 $2,000,000 $2,000,000 $
C	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY X SCHEDULED AUTOS X HIRED AUTOS ONLY NON-OWNED AUTOS ONLY	X	X	971982109	08/02/2024	08/02/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$1,000,000 $ $ $ $
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $			001465261	08/02/2024	08/02/2025	EACH OCCURRENCE AGGREGATE 	$1,000,000 $1,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	X	WC1000066612025A	01/01/2025	01/01/2026	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)

The General Liability and Automobile policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed on behalf of the named insured. The General Liability policy contains a special endorsement with "Primary and Noncontributory" wording, when required by written contract. The General Liability, Automobile & Worker's (See Attached Descriptions)

CERTIFICATE HOLDER

City of Santa Fe Waste
Water/Purchasing
P.O. Box 909
Santa Fe, NM 87504-0000

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

Compensation policies provide a Waiver of Subrogation when required by written contract.

RE: Various Jobs and Projects

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Where required by written contract or written agreement.	All Operations of the Named Insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Where required by written contract or written agreement.	All Operations of the Named Insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

 © ISO Properties, Inc., 2004

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS

Name Of Additional Insured Person(s) Or Organization(s):
If no entry appears above, this endorsement applies to all Additional Insureds covered under this policy.

Any coverage provided to an Additional Insured under this policy shall be excess over any other valid and collectible insurance available to such Additional Insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance apply on a primary and noncontributory basis.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
Where required by written contract or written agreement.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

 © Insurance Services Office, Inc., 2008

BUILDERS TRUST®
OF NEW MEXICO

WAIVER OF SUBROGATION

Insured Name: Alive Electric Inc.
Insured Policy Number: WC100-0006661-2025A

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: 12/11/2024 Countersigned by Randy L. Akin

Agency Number: 2 – 4
Agency Name: USI Insurance Services LLC

(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

Signature: P. Fred Heerbrandt, P.E.
P. Fred Heerbrandt, P.E. (Feb 12, 2025 12:13 MST)

Email: pfheerbrandt@santafenm.gov

Services Offered to the City of Santa Fe (9.2023)

Approved:
These services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

- ADA Accessibility Consulting Services
- Auctioneering Services
- Bulk Mailing and Sorting
- Call Center Services
- Computer Refurbishing
- Courier Services
- Decontamination, Sanitation and Sterilization Services
- Debris Removal
- Document Imaging
- Document Shredding
- Envelope Stuffing
- General Labor
- Hard Drive Destruction
- Janitorial and Housekeeping Services – Including Carpet Cleaning & Floor Care
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Meeting Minute Preparation Services
- Pest Control and Extermination Services
- Printing Services
- Rest Area Maintenance
- Screen Printing
- Snow Removal
- Yard, Grounds, and Lawn Maintenance

Permissive:
The services have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.

- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT Support
- IT Security Services
- IT – Web Design
- IT – Web Programmer
- Marketing
- Social Media Marketing
- Training Services

For the complete State Use service list, please go to: http://horizonsofnewmexico.org/services.html

City of Santa Fe, New Mexico

memo

Date: January 24, 2025

To: Public Works and Utilities Committee / Finance Committee

Via: Jesse D. Roach, Water Division Director

From: Jonathan M. Montoya, SOS Section Manager
Michael R. Moya, T&D Section Manager
Bill Huey, Water Division Engineer

Subject: Request to Approval of Amendment No. 3 to Price Agreement #24-0657 with Sub Surface Contracting, Inc.to Increase Maximum Compensation by $542,187.50 for a New Total Contract Amount of $2,168,750.00 including NMGRT. (Bill Huey, Engineer, bchuey@santafenm.gov).

Vendor Name: Sub Surface Contracting, Inc.

Vendor Number: 1921

ITEM AND ISSUE:

The Water Division requests approval of Amendment No. 3 to Price Agreement #24-0657 with Sub Surface Contracting, Inc.(Sub Surface) to Increase Maximum Compensation by $542,187.50 for a New Total Contract Amount of $2,168,751.00 including New Mexico Gross Receipt Tax (NMGRT) with No Corresponding Change to the Term of the Agreement. (Bill Huey, Engineer, bchuey@santafenm.gov).

Action Requested: Approval of Amendments No. 3 to Price Agreement #24-0657

BACKGROUND AND SUMMARY:

The City Wide Water Utility Construction Contract is a multi-contractor on-call requirements contract, with the Water Division issuing work orders as needed for work such as water line replacements, and emergency repairs. In July 2021, the Governing Body approved ITB No. '21/37/B for $250,000.00 plus NMGRT per year.

Sub Surface is one of the primary Emergency Response contractors for maim breaks. Historically December to March is the season for most main breaks. Sub Surface will not be able to respond without additional funding provided in Contract Amendment #3. Water is requesting the addition of $542,187.50 to each Contractor for a new Total Contract Amount of $2,168,751.00 including NMGRT for Sub Surface.

This is a multi-contractor award ITB to set the applicable Bid Items for future work. Future work will be assigned under fully signed Work Orders for planned work on will be followed with a signed Work Order for Emergency Repair. The exact type of work required will be used to select from the applicable Bid Items.

PROCUREMENT METHOD:

ITB No. '21/37/B FY 21/22 City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 approved by City Council on 7/28/2021.

Chief Procurement Officer Approval: _____ **Date:** _____
Comment/Exceptions: _____

Supporting Information:

CONTRACT NUMBER:
The FY25 Munis contract number is 3202777 for Sub Surface

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

The funding source is:
Fund Name/Number: Water Enterprise Fund 505
Munis Org Name/Number: Water CIP/5050395
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:** _____
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: Contract is used to repair main breaks and replace smaller sections of main.

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

Project Ledger #: _____

Anticipated length of project: To be determined

Asset Manager Approval: Josie Bolden, Controller 03-03-25 **Date:** _____
Comment/Exceptions: _____
Josie Bolden, Controller 03-03-25 (Mar 3, 2025 15:08 MST)

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:

cc:

Item#_____
Munis Contract# 3202777
Original Contract Item# 21-0378
CIP #: 3057

CITY OF SANTA FE
AMENDMENT No. 3 TO
PRICE AGREEMENT 21-0378

This AMENDMENT No. 3 (the "Amendment") amends the CITY OF SANTA FE PRICE AGREEMENT, dated July 28, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide On-Call Construction Services for City Wide Utility Construction & Repair for the City of Santa Fe.

B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to add five hundred forty-two thousand one hundred eighty-seven dollars and fifty cents ($542,187.50), inclusive of New Mexico Gross Receipts Tax (NMGRT), so that Article 2, paragraph A reads in its entirety as follows:

> The City shall pay to the Contractor under this Agreement in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed two million one hundred sixty-eight thousand, seven hundred and fifty one dollars and no cents ($2,168,751.00) including NMGRT for a total of four (4) years. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend

for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT 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. 3 to the Contract as of the dates set forth below.

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR:
SUB SURFACE CONTRACTING, INC.

Jeremey Sanderson
_____
JEREMEY SANDERSON, VICE PRESIDENT

DATE: Feb 20, 2025

CRS# 0214256000

ATTEST:

_____
ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 20, 2025 08:52 MST)
_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
_____
EMILY OSTER, FINANCE DIRECTOR

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/19/2024

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 License # 0757776 HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: Michelle Vialpando PHONE (A/C, No, Ext): (505) 992-1873 FAX (A/C, No): (866) 487-3972 E-MAIL ADDRESS: michelle.vialpando@hubinternational.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
	INSURER A : ACUITY, A Mutual Insurance Company — 14184
INSURED Sub Surface Contracting Inc 27A Paseo De River St Santa Fe, NM 87507	INSURER B : Builders Trust of New Mexico
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X PD Ded: $500 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X		Z75944	7/1/2024	7/1/2025	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 $ 250,000 $ 10,000 $ 1,000,000 $ 3,000,000 $ 3,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			Z75944	7/1/2024	7/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 0			Z75944	7/1/2024	7/1/2025	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		0692	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
A	Leased/Rented Eqpt			Z75944	7/1/2024	7/1/2025	Ded: $500 / Limit:	200,000

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

.

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

City of Santa Fe
Wastewater Division
Attn: Stan Holland
73 Paseo Real
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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ADDITIONAL REMARKS SCHEDULE

AGENCY	License # 0757776	NAMED INSURED
HUB International Insurance Services (SOW)		Sub Surface Contracting Inc 27A Paseo De River St Santa Fe, NM 87507
POLICY NUMBER		
SEE PAGE 1		
CARRIER	NAIC CODE	EFFECTIVE DATE: SEE PAGE 1
SEE PAGE 1	SEE P 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

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

Description of Operations/Locations/Vehicles:
Where required by written contract or agreement, the City of Santa Fe, Wastewater Division, City Representative, other parties reasonably requested in writing by the City of Santa Fe, and their officials, members, officers, employees, and agents are included as additional insured with respects to general liability, on a primary & non-contributory basis.

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ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU **CG-2033R(6-13)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Section II - Who Is An Insured is amended to include as an additional insured:

a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and

b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability for *bodily injury, property damage* or *personal and advertising injury* caused, in whole or in part, by:

a. Your acts or omissions; or

b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However the insurance afforded to such additional insured:

a. Only applies to the extent permitted by law; and

b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

a. *Bodily injury, property damage* or *personal and advertising injury* arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury* or *property damage* involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

b. *Bodily injury* or *property damage* occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of *your work* out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement you have entered into with the additional insured; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

ADDITIONAL INSURED - COMPLETED OPERATIONS AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU (OWNERS, LESSEES OR CONTRACTORS) **CG-7277(6-13)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

1. Section II - Who Is An Insured is amended to include as an additional insured:

a. Any person(s) or organization(s) for whom you have performed operations if you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as additional insured on your policy for completed operations; and

b. Any other person(s) or organization(s) you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability included in the *products-completed operations hazard* for *bodily injury* or *property damage* caused, in whole or in part, by *your work* performed for that additional insured at the location designated and described in the contract or agreement.

However:

a. The insurance afforded to such additional insured only applies to the extent permitted by law; and

b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

a. *Bodily injury* or *property damage* which occurs prior to the execution of the contract or agreement described in item 1; or

b. *Bodily injury* or *property damage* that occurs after the time period during which the contract or agreement described in item 1 requires you to add such person or organization onto your policy as an additional insured for completed operations; or

c. *Bodily injury* or *property damage* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:

(1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury* or *property damage* involved the rendering of or the failure to render any professional services by or for you.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

CG-2001R(4-13)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RESIDENTIAL CARE FACILITY LIABILITY COVERAGE PART

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Item# 24-0657
Munis Contract# 3202777
Original Contract Item#_21-0378
CIP # 3057

CITY OF SANTA FE
AMENDMENT No.2
TO
PRICE AGREEMENT# 21-0378

This AMENDMENT No. 2 (the "Amendment") amends the CITY OF SANTA FE PRICE AGREEMENT, dated July 28, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide On-Call Construction Services for City Wide Utility Construction & Repair for the City of Santa Fe.

B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to add five hundred forty-two thousand one hundred eighty-seven dollars and fifty cents ($542,187.50), inclusive of New Mexico Gross Receipts Tax (NMGRT), so that Article 2, paragraph A reads in its entirety as follows:

> The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed one million dollars ($1,626,563.50) including NMGRT for a total of four (4) years. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million six hundred twenty-six thousand five hundred and sixty-three dollars and fifty**

cents ($1,626,563.50). This amount is a maximum and not a guarantee that the **work** assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Contract as of the dates set forth below.

CITY OF SANTA FE:

Alan Webber (Nov 21, 2024 21:23 MST)

ALAN WEBBER, MAYOR

Date: Nov 21, 2024

CONTRACTOR:
SUB SURFACE CONTRACTING, INC.

JEREMY SANDERSON, VICE PRESIDENT

Date: 11/8/24

CRS # 02104256000

ATTEST:

Andrea Salazar
Andrea Salazar (Nov 22, 2024 08:26 MST)

CITY CLERK

GB MTG 11/13/2024

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Nov 8, 2024 13:10 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

	Sub Surface		
Bid Item	Article and Description	Unit	Unit Price
Construction Items			
5	2" PVC Water Main, cip, all lengths	LF	$ 30.00
10	4" PVC Water Main, cip, <100'	LF	$ 36.00
15	4" PVC Water Main, cip, >100'	LF	$ 34.00
20	6" PVC Water Main, cip, <100'	LF	$ 42.00
25	6" PVC Water Main, cip, >100'	LF	$ 39.00
30	8" PVC Water Main, cip, <100'	LF	$ 48.00
35	8" PVC Water Main, cip, >100'	LF	$ 45.50
40	10" PVC Water Main, cip, <100'	LF	$ 52.00
45	10" PVC Water Main, cip, >100'	LF	$ 49.00
50	12" PVC Water Main, cip, <100'	LF	$ 66.75
55	12" PVC Water Main, cip, >100'	LF	$ 64.50
60	14" PVC Water Main, cip	LF	$ 79.00
65	16" PVC Water Main, cip	LF	$ 97.00
70	24" PVC Water Main, cip	LF	$ 100.00
75	2" DI Water Main, cip, all lengths	LF	$ -
80	4" DI Water Main, cip, <100'	LF	$ 57.50
85	4" DI Water Main, cip, >100'	LF	$ 56.00
90	6" DI Water Main, cip, <100'	LF	$ 53.00
95	6" DI Water Main, cip, >100'	LF	$ 51.00
100	8" DI Water Main, cip, <100'	LF	$ 60.25
105	8" DI Water Main, cip, >100'	LF	$ 58.00
110	10" DI Water Main, cip, <100'	LF	$ 65.00
115	10" DI Water Main, cip, >100'	LF	$ 63.00
120	12" DI Water Main, cip, <100'	LF	$ 78.00
125	12" DI Water Main, cip, >100'	LF	$ 74.00
130	14" DI Water Main, cip	LF	$ 87.00
135	16" DI Water Main, cip	LF	$ 101.00
140	24" DI Water Main, cip	LF	$ 159.00
145	Extra Pay for Trench Depth, 6'-8'	LF	$ 8.00
150	Extra Pay for Trench Depth, 8'-10'	LF	$ 12.00
155	Extra Pay for Trench Depth, 10'-14'	LF	$ 30.00
160	Rock Excavation	CY	$ 220.00
165	Exploratory Excavation (as SDCW Approved)	CY	$ 65.00
170	Imported Backfill (as SDCW Approved)	CY	$ 24.00
175	Fitting Installation	LB	$ 4.00
180	Fitting Insertion	LB	$ 34.00
185	4" Retainer Ring/ Bolt on Flange	EA	$ 75.00
190	6" Retainer Ring/ Bolt on Flange	EA	$ 105.00
195	8" Retainer Ring/ Bolt on Flange	EA	$ 119.00
200	10" Retainer Ring/ Bolt on Flange	EA	$ 121.00
205	12" Retainer Ring/ Bolt on Flange	EA	$ 145.00
210	14" Retainer Ring/ Bolt on Flange	EA	$ 179.00
215	16" Retainer Ring/ Bolt on Flange	EA	$ 285.00
220	4"Joint Harness	EA	$ 96.00
225	6" Joint Harness	EA	$ 130.00
230	8" Joint Harness	EA	$ 155.00

235	10" Joint Harness	EA	$ 160.00
240	12" Joint Harness	EA	$ 200.00
245	14" Joint Harness	EA	$ 375.00
250	16" Joint Harness	EA	$ 455.00
255	Concrete Thrust Blocking (as SDCW Approved)	CY	$ 355.00
260	Tapping Sleeve w/ Tap, 4" X 4"	EA	$ 1,400.00
265	Tapping Sleeve w/ Tap, 6" X 4" - 6"	EA	$ 1,600.00
270	Tapping Sleeve w/ Tap, 8" X 4" - 8"	EA	$ 1,800.00
275	Tapping Sleeve w/ Tap, 10" X 4" - 10"	EA	$ 2,100.00
280	Tapping Sleeve w/ Tap, 12" X 4" - 12"	EA	$ 2,300.00
285	Tapping Sleeve w/Tap, 20" X 4" - 20"	EA	$ 4,200.00
290	Non-Pressurized Connections, 2" line	EA	$ 2,500.00
295	Non-Pressurized Connections, 4"-10" line	EA	$ 3,675.00
300	Non-Pressurized Connections, 12"-20" line	EA	$ 4,100.00
305	2" CL125 Gate Valves, cip.	EA	$ 975.00
310	4" CL125 Gate Valves, cip.	EA	$ 1,050.00
315	6" CL125 Gate Valves, cip.	EA	$ 1,300.00
320	8" CL125 Gate Valves, cip.	EA	$ 1,825.00
325	10" CL125 Gate Valves, cip.	EA	$ 2,335.00
330	12" CL125 Gate Valves, cip.	EA	$ 2,800.00
335	2" CL250 Gate Valves, cip.	EA	$ 945.00
340	4" CL250 Gate Valves, cip.	EA	$ 1,925.00
345	6" CL250 Gate Valves, cip.	EA	$ 2,050.00
350	8" CL250 Gate Valves, cip.	EA	$ 2,950.00
355	10" CL250 Gate Valves, cip.	EA	$ 4,200.00
360	12" CL250 Gate Valves, cip.	EA	$ 4,625.00
365	16" CL250 Gate Valves, cip.	EA	$ 7,100.00
370	20" CL250 Gate Valves, cip.	EA	$ 16,190.00
375	24" CL250 Gate Valves, cip.	EA	$ 23,250.00
380	12" CL250 Butterfly Valves, cip.	EA	$ 2,800.00
385	16" CL250 Butterfly Valves, cip.	EA	$ 4,850.00
390	20" CL250 Butterfly Valves, cip.	EA	$ 6,700.00
395	24" CL250 Butterfly Valves, cip.	EA	$ 9,325.00
400	Fire Hydrant, 5' or less bury, cip.	EA	$ 3,125.00
405	Fire Hydrant Extension, 6" or 12" length	EA	$ 840.00
410	Fire Hydrant Extension, 18" or 24" length	EA	$ 1,225.00
415	Fire Hydrant Remove & Relay	EA	$ 800.00
420	Fire Hydrant Remove & Return	EA	$ 575.00
425	2 1/4" Flush Hydrant	EA	$ 1,565.00
430	2" Blow-Off Valve Installation	EA	$ 1,340.00
435	2" Pressure Relief Valve, cip.	EA	$ 6,830.00
440	3" Pressure Relief Valve, cip.	EA	$ 7,075.00
445	4" Pressure Relief Valve, cip.	EA	$ 8,195.00
450	6" Pressure Relief Valve, cip.	EA	$ 10,950.00
455	8" Pressure Relief Valve, cip.	EA	$ 15,525.00
460	12" Pressure Relief Valve, cip.	EA	$ 29,725.00
465	Air & Vacuum Release Valve, 1"	EA	$ 2,950.00
470	Air & Vacuum Release Valve, 2"	EA	$ 4,140.00
475	Install City of Santa Fe Furnished Valve/Meter, 2" - 4"	EA	$ 450.00
480	Install City of Santa Fe Furnished Valve/Meter, 6" - 8"	EA	$ 550.00

485	Install City of Santa Fe Furnished Valve/Meter, 10"-12"	EA	$	750.00
490	Metered 2” Bypass – Vault Installation	EA	$	3,185.00
495	Valve Box, cip.	EA	$	825.00
500	Valve Box Replacement	EA	$	975.00
505	Valve Box Removal of Existing	EA	$	450.00
510	Valve Box Adjustment	EA	$	625.00
515	Valve Stem Extension, 0’-4’ Depth	EA	$	250.00
520	Precast 4' Diameter Pit w/ Lid Min. 4' Depth	VF	$	4,000.00
525	Precast 6' Diameter Pit w/ Lid Min. 4' Depth	VF	$	5,150.00
530	Precast 8' Diameter Pit w/ Lid Min. 4' Depth	VF	$	6,200.00
535	Cast-In-Place RCP Vault w/ Lid	CY	$	12,500.00
540	Prefabricated Vault, 4' X 8'	EA	$	8,995.00
545	Native Seeding	ACRE	$	2,275.00
550	Bollards (pair)	EA	$	1,200.00
555	4" Steel Casing	LF	$	95.00
560	4" PVC Casing	LF	$	85.00
565	14" Steel Casing	LF	$	225.00
570	16" Steel Casing	LF	$	240.00
575	18" Steel Casing	LF	$	275.00
580	22" Steel Casing	LF	$	330.00
585	26" Steel Casing	LF	$	400.00
590	28" Steel Casing	LF	$	475.00
595	30" Steel Casing	LF	$	425.00
600	36" Steel Casing	LF	$	460.00
605	Bore & Jack Casing Pipe	DIA-IN- LF	$	28.00
610	Open Cut Casing Pipe Installation, < 6' Deep	LF	$	39.00
615	Asphalt Pavement Removal & Disposal, <2”	SY	$	65.00
620	Asphalt Pavement Removal & Disposal, 2”-6”	SY	$	65.00
625	Concrete Pavement Removal & Disposal, <2”	SY	$	95.00
630	Concrete Pavement Removal & Disposal, 2”-6”	SY	$	110.00
635	Concrete Curb and Gutter Removal & Disposal	LF	$	29.00
640	Concrete Sidewalk Removal & Disposal	SY	$	30.00
645	Replace City Street Pavement w/o Laydown Machine, Virgin Asphalt	SY	$	75.00
650	Replace City Street Pavement w/o Laydown Machine, Recycled Asphalt	SY	$	75.00
655	Replace City Street Pavement with Laydown Machine, Virgin Asphalt	SY	$	265.00
660	Replace City Street Pavement with Laydown Machine, Recycled Asphalt	SY	$	265.00
665	Replace City Street Pavement with Temporary Cold Mix	SY	$	105.00
670	Replace Non-City Street Pavement w/o Laydown Machine, Virgin Asphalt	SY	$	75.00
675	Replace Non-City Street Pavement w/o Laydown Machine, Recycled Asphalt	SY	$	75.00
680	Replace Non-City Street Pavement with Laydown Machine, Virgin Asphalt	SY	$	265.00
685	Replace Non-City Street Pavement with Laydown Machine, Recycled Asphalt	SY	$	265.00
690	Replace Non-City Street Pavement with Temporary Cold Mix	SY	$	105.00

695	Replace Concrete Pavement	SY	$ 290.00
700	Replace Concrete Curb & Gutter	LF	$ 45.00
705	Replace Concrete Sidewalk	SY	$ 190.00
710	Replace Gravel Surface, 0”-2”	CY	$ 55.00
715	Replace Gravel Surface, 2”-4”	CY	$ 65.00
720	Base course/Gravel (crushed or landscape), 0’-3”	SY	$ 35.00
725	Base course/Gravel (crushed or landscape), 3”-6”	SY	$ 45.00
730	Service, 3/4" Single, New Main	EA	$ 1,650.00
735	Service, 3/4" Double, New Main	EA	$ 1,975.00
740	Service, 1", New Main	EA	$ 1,825.00
745	Service, 1 1/2", New Main	EA	$ 3,590.00
750	Service, 2", New Main	EA	$ 3,970.00
755	Service, 3/4" Single, Existing Main	EA	$ 1,650.00
760	Service, 3/4" Double, Existing Main	EA	$ 1,975.00
765	Service, 1", Existing Main	EA	$ 1,825.00
770	Service, 1 1/2", Existing Main	EA	$ 3,590.00
775	Service, 2", Existing Main	EA	$ 3,950.00
780	Service Replacement, 3/4"	EA	$ 1,850.00
785	Service Replacement, Double, 3/4"	EA	$ 2,100.00
790	Service Replacement, 1”	EA	$ 1,950.00
795	Service Replacement, 1 1/2"	EA	$ 3,750.00
800	Service Replacement, 2”	EA	$ 4,125.00
805	Meter Box Relocation/Replacement, 3/4"	EA	$ 1,200.00
810	Meter Box Relocation/Replacement, 1”	EA	$ 1,400.00
815	Meter Box Relocation/Replacement, 1-1/2"	EA	$ 1,600.00
820	Meter Box Relocation/Replacement, 2”	EA	$ 1,600.00
825	Service Transfer, 3/4"	EA	$ 625.00
830	Service Transfer, 1”	EA	$ 725.00
835	Service Transfer, 1 1/2"	EA	$ 825.00
840	Service Transfer at Main, 2”	EA	$ 850.00
845	Retire Existing Service at Main, 3/4"- 2"	EA	$ 725.00
850	Retire Existing Meter Box & Setting	EA	$ 525.00
855	Adjust Meter Box To Grade	EA	$ 450.00
860	Service Saddle, 3/4" Tap, 4"-12" Main	EA	$ 650.00
865	Service Saddle, 1" Tap, 4"-12" Main	EA	$ 775.00
870	Service Saddle, 1 1/2" Tap, 4"-12" Main	EA	$ 950.00
875	Service Saddle, 2" Tap, 4"-12" Main	EA	$ 1,075.00
880	Service Tubing, 3/4"	LF	$ 33.50
885	Service Tubing, 1”	LF	$ 36.25
890	Service Tubing, 1 1/2"	LF	$ 44.00
895	Service Tubing, 2”	LF	$ 53.00
900	Air and Vacuum Valve (individual)	EA	$ 2,350.00
905	Air and Vacuum Valves	GROUP OF 10	$ 21,250.00
910	Automatic Flushing Valve	EA	$ 6,235.00
915	Materials Mark-Up Over Invoice	%	$ 20,000.00
920	Traffic Control Mark-Up Over Invoice	%	$ 8,000.00
925	Street-Cut Permits	Allow.	$ 375.00
930	Project Signs	EA	$ 450.00
935	Archeological Required Delay (after 2 hrs.)	HR	$ 375.00

940	Archeological Required Mob/Demob	LS	$ 450.00
EMERGENCY REPAIR			
9000	Supervisor's Truck with tools	HR	$ 35.00
9100	Backhoe/Skid Steer	HR	$ 58.00
9200	Compressor with tools	HR	$ 55.00
9300	Dump Truck	HR	$ 60.00
9400	Pump	HR	$ 30.00
9500	Laborer	HR	$ 43.00
9600	Pipe Fitter	HR	$ 45.00
9700	Equipment Operator	HR	$ 58.00
9800	Foreman	HR	$ 70.00
9900	Rental Items Mark-Up Over Invoice (multiply $5,000 x your % for Item Price)	%	$ 5,000.00
9950	Materials Mark-Up Over Invoice (multiply $20,000 x your 5 for Item Price)	%	$ 20,000.00

Tax Rate: **8.1875%**

City of Santa Fe, New Mexico

memo

Date: October 29, 2024

To: Public Works and Utilities Committee / Finance Committee / City Council

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

From: Bill Huey, Water Division Engineer BH

Subject: Request for Approval of Amendment No. 2 to Price Agreement #21-0378 with Sub Surface Contracting, Inc. to Increase Maximum Compensation by $542,187.50 for a New Total Contract Amount of $1,626,562.50 including NMGRT. (Bill Huey, Engineer, bchuey@santafenm.gov).

Vendor Name: Sub Surface Contracting, Inc.

Vendor Number: 1921

Contract Number: 3202777

ITEM AND ISSUE:

The Public Utilities Department Water Division requests approval of Amendment No. 2 to Price Agreement #21-0378 with Sub Surface Contracting, Inc. (Sub Surface) to Increase Maximum Compensation by $542,187.50 for a New Total Contract Amount of $1,626,562.50 including New Mexico Gross Receipt Tax (NMGRT) with No Corresponding Change to the Term of the Agreement. (Bill Huey, Engineer, bchuey@santafenm.gov).

ACTION REQUESTED:

Approval of Amendment No. 2 to Price Agreement #21-0378

BACKGROUND AND SUMMARY:

The City Wide Water Utility Construction Contract is a multi-contractor on-call requirements contract, with the Water Division issuing work orders as needed for work such as water line replacements, and emergency repairs. In July 2021, the Governing Body approved ITB No. '21/37/B for $250,000.00 plus NMGRT per year for each of the two contractors, Sub Surface and A.A.C. Construction LLC. Due to Supply Chain delays, $467,000.00 in orders from Sub Surface on the previous contract were delayed until after this contract was in effect and were paid under this contract. Current contract possible funding is limited to $29,713.52 without approval of Amendment #3.

This is a multi-contractor award ITB to set the applicable Bid Items for future work. Future work will be assigned under fully signed Work Orders for planned work on will be followed with a signed Work Order

for Emergency repair. The exact type of work required will be used to select from the applicable Bid Items.

PROCUREMENT METHOD:

ITB No. '21/37/B FY 21/22 City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 approved by City Council on 7/28/2021.

Chief Procurement Officer Approval: _____ **Date:** Nov 12, 2024
Comment/Exceptions: _____

Supporting Information:

CONTRACT NUMBER:
The FY25 Munis contract number is 3202777
The FY25 Project ledger number for City Wide Construction is WTR2550504
$$$$$ SOURCE/REVENUE: ☒Expense ☐Revenue

The funding source is:
Fund Name/Number: Water Enterprise Fund 505
Munis Org Name/Number: Water CIP/5050395
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: ALEXIS LOTERO (Nov 12, 2024 10:42 MST) **Date:** Nov 12, 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: Contract is used for water line main break emergency repairs and replacements.

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

Project Ledger #: _____

Anticipated length of project: To be determined

Asset Manager Approval: Lisa Storey (Nov 12, 2024 10:53 MST) **Date:** Nov 12, 2024
Comment/Exceptions: Nov 12, 2024

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:

Gina Wolff
vawolff@santafenm.gov
505-955-4271

ATTACHMENTS:

Amendment No. 2
Budget Amendment Request (BAR)

cc:

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	10/29/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
Water Cap Proj, WIP Construction	5050395	572970	WTR2550504	542,188	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 542,188	$ -

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

Please see attached Memo.

Contract (3202777) with Sub Surface Contracting Inc for city-wide water line emergency repairs and replacements

Amendment No. 2, Item No. 21-0378.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
505	(542,188)
TOTAL:	(542,188)

Jonna Leigh Stack for Bill Huey — 10/29/2024
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

John Dupuis (Nov 1, 2024 10:29 MDT)
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 #:

Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

SUBSURF-01 DONISCHUK

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/19/2024

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 License # 0757776 HUB International Insurance Services (SOW) 2905 Rodeo Park Drive East Building 6, Suite 100 Santa Fe, NM 87505	CONTACT NAME: Michelle Vialpando PHONE (A/C, No, Ext): (505) 992-1873 FAX (A/C, No): (866) 487-3972 E-MAIL ADDRESS: michelle.vialpando@hubinternational.com
INSURED Sub Surface Contracting Inc 27A Paseo De River St Santa Fe, NM 87507	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : ACUITY, A Mutual Insurance Company 14184 INSURER B : Builders Trust of New Mexico INSURER C : INSURER D : INSURER E : INSURER F :

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR X PD Ded: $500 GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	X		Z75944	7/1/2024	7/1/2025	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 $ 250,000 $ 10,000 $ 1,000,000 $ 3,000,000 $ 3,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS X HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			Z75944	7/1/2024	7/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	[ ] UMBRELLA LIAB [X] OCCUR X EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0			Z75944	7/1/2024	7/1/2025	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		0692	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
A	Leased/Rented Eqpt			Z75944	7/1/2024	7/1/2025	Ded: $500 / Limit:	200,000

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

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

City of Santa Fe
Wastewater Division
Attn: Stan Holland
73 Paseo Real
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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ADDITIONAL REMARKS SCHEDULE

AGENCY	License # 0757776	NAMED INSURED
HUB International Insurance Services (SOW)		Sub Surface Contracting Inc 27A Paseo De River St Santa Fe, NM 87507
POLICY NUMBER		
SEE PAGE 1		
CARRIER	NAIC CODE	EFFECTIVE DATE: SEE PAGE 1
SEE PAGE 1	SEE P 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

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

Description of Operations/Locations/Vehicles:
Where required by written contract or agreement, the City of Santa Fe, Wastewater Division, City Representative, other parties reasonably requested in writing by the City of Santa Fe, and their officials, members, officers, employees, and agents are included as additional insured with respects to general liability, on a primary & non-contributory basis.

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ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU CG-2033R(6-13)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Section II - Who Is An Insured is amended to include as an additional insured:

a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and

b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability for *bodily injury, property damage* or *personal and advertising injury* caused, in whole or in part, by:

a. Your acts or omissions; or

b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However the insurance afforded to such additional insured:

a. Only applies to the extent permitted by law; and

b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

a. *Bodily injury, property damage* or *personal and advertising injury* arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury* or *property damage* involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

b. *Bodily injury* or *property damage* occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of *your work* out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement you have entered into with the additional insured; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

ADDITIONAL INSURED - COMPLETED OPERATIONS AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU (OWNERS, LESSEES OR CONTRACTORS) **CG-7277(6-13)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

1. Section II - Who Is An Insured is amended to include as an additional insured:

a. Any person(s) or organization(s) for whom you have performed operations if you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as additional insured on your policy for completed operations; and

b. Any other person(s) or organization(s) you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability included in the *products-completed operations hazard* for *bodily injury* or *property damage* caused, in whole or in part, by *your work* performed for that additional insured at the location designated and described in the contract or agreement.

However:

a. The insurance afforded to such additional insured only applies to the extent permitted by law; and

b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

a. *Bodily injury* or *property damage* which occurs prior to the execution of the contract or agreement described in item 1; or

b. *Bodily injury* or *property damage* that occurs after the time period during which the contract or agreement described in item 1 requires you to add such person or organization onto your policy as an additional insured for completed operations; or

c. *Bodily injury* or *property damage* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:

(1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury* or *property damage* involved the rendering of or the failure to render any professional services by or for you.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

CG-2001R(4-13)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RESIDENTIAL CARE FACILITY LIABILITY COVERAGE PART

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

CITY OF SANTA FE
AMENDMENT No. 1 TO
PRICE AGREEMENT # 21-0378

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PRICE AGREEMENT, July 28, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide Construction Services for City Wide Utility Construction & Repair for the City of Santa Fe.

B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to remove the per Fiscal Year Cap, so that Article 2, paragraph A reads in its entirety as follows:

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed one million dollars ($1,000,000) excluding gross receipts tax for a total of 4 years. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling eighty-four thousand three hundred seventy-five dollars ($84,375) 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 one million eighty-four thousand three hundred and seventy-six dollars ($1,084,376). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to**

provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT IN FULL FORCE.

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

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: May 23, 2022

CONTRACTOR:
SUB SURFACE CONTRACTING.
NEAL KEIPER

NAME & TITLE

Date: 4-14-22

CRS# 02104256000
Registration #4691

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK
GB MTG 05/11/2022

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Apr 11, 2022 08:11 MDT)

Apr 11, 2022

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

Alexis Lotero
Alexis Lotero (May 22, 2022 21:51 MDT)

~~MARY MCCOY~~, FINANCE DIRECTOR
5050386.520200 AH
AH

(Rev. 4/20)

City of Santa Fe
Central Purchasing Office

Price Agreement

Awarded Contractor(s): 1) Sub Surface Contracting, Inc. 2) A.A.C. Construction, LLC.	**Price Agreement Number:** **Payment Terms: Net 30**
Ship To: **All City of Santa Fe Departments and Political Subdivisions allowed by Law**	**F.O.B.: Destination**
Invoice To: **City of Santa Fe** **Accounts Payable** **PO Box 909** **Santa Fe, NM 87504-0909**	**Term: July 1, 2021 to June 30, 2025** **Delivery: As requested by Department**

Title: City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057

This Price Agreement is to be awarded pursuant to the respective Invitation to Bid (ITB) 21/37/B and shall become a part thereof.

This Price Agreement is made subject to the "terms and conditions" as indicated on subsequent price agreement articles and construction contract pages.

Instructions to Supplier:

- By commencing under this Price Agreement (Agreement), the Contractor agrees to all terms and conditions within and attached and agrees that if there is a conflict with the Contractors terms, the City of Santa Fe's terms and conditions shall govern. In cases of discrepancy between the work order, purchase order and this Agreement, the terms and conditions of this Agreement shall prevail.
- Do not fill orders for goods/services not listed in this Agreement.
- Orders against this Agreement must be placed with as a separate contract work order with a purchase order.
- Do not fill orders without a valid quote, purchase order work order.
- The purchase order release number must be on all invoices.
- The City of Santa Fe (City) will not be liable for purchases made by unauthorized individuals.

Please forward all original invoice(s) to the Accounts Payable Department at PO Box 909, Santa Fe, NM 87504-0909

Instructions to Requesting Department:

- Do not place orders for goods/services not listed in the Procurement Contract.
- To place an order against this Procurement Contract, issue a Purchase Order Release before placing the order with the Supplier.

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

Terms and Conditions

General: When the City or the Requesting Department issues a contract or a purchase order release, a binding contract is created.

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

Assignment:

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

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

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

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

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

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

Taxes: The unit price shall exclude all state taxes.

Default: The City reserves the right to cancel all or any part of this order without cost to the City, if the Contractor fails to meet the provisions of this order 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 of

the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

Non-Collusion: In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Chief Procurement Officer or his/her designee.

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

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

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

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

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

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

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

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

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

ARTICLES

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

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

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

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

Article IV – Shipping and Billing Instructions
Delivery shall be as called for by the Requesting Department. Shipment shall be made only against specific orders which the Requesting Department may place with the Contractor during the term. Contractor shall ship in accordance with the following instructions:

a. The Contractor shall enclose a packing list with each shipment listing the City's purchasing document number and the Contractor's name, Requesting Department's contact name and location shall be shown on each packing and delivery ticket, package, bill of lading, the commercial parts number (if any) for each item and other correspondence in connection with the shipments. The Requesting Department's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.

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

c. Invoices must be submitted to the City's **Accounts Payable** and NOT the Central Purchasing Office.

If Contractor is unable to meet stated delivery the City's Chief Procurement Officer or his/her designee must be notified.

Article V – Termination
The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement. Contractor shall give the 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.

Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

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

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

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/ or personal injury(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.

Contractor shall provide all insurance necessary to employees on the work site, including but not limited to Worker's Compensation.

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

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

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

Article XI – Wage Rates
Pursuant to the requirements of any Contract entered into that will have a Work Order (WO) in excess of sixty thousand dollars ($60,000) for construction is subject to the minimum wage rate determination issued by the New Mexico Department of Work Force Solutions for this project/WO.

Item# 21-0378
Munis Contract#_____

CITY OF SANTA FE

ON CALL CITY-WIDE WATER UTILITY CONSTRUCTION & REPAIR PRICE AGREEMENT, CIP # 3057

THIS AGREEMENT is made and entered into by and between the **CITY OF SANTA FE, NEW MEXICO**,hereinafter referred to as the "City," and **SUB SURFACE CONTRACTING, INC. AND A.A.C. CONSTRUCTION**, hereinafter referred to as the "Contractor" and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

1) The Contractor shall perform all the work required by Water Division, as required, on each Work Order (W/O) in the Contract Documents (attached) for City-Wide Water Construction & Repair Contract. The work consists of, but is not limited to furnishing all equipment, labor and materials for the construction and repair of water mains, valves, hydrants, metered water service lines and settings, pressure reducing valves, vaults, and other incidental work such as pavement removal and replacement, traffic control all as required to extend, replace or repair water distribution, water storage, and water supply infrastructure, in accordance with the drawings, specifications, W/O, attached price sheets and other Contract Documents. All water piping shall be new, poly-wrapped ductile iron, unless otherwise specified.

2) The Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

3) The Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of the work.

4) The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.

5) The Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

6) Incorporation by Reference. All exhibits, addenda, schedules of ITB 21/37/B attached hereto and all certificates, work order documents, drawings, as-builts and other instruments contemplated to be delivered hereunder are hereby expressly made a part of this Agreement as fully as though set forth herein, and all references to this Agreement herein or in any of such writings shall be deemed to refer to and include all of such writings. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. If there is any conflict between such exhibits or addenda and the terms of this Agreement, such exhibits or addenda shall control.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed two hundred and fifty thousand dollars ($250,000) excluding gross receipts tax per Fiscal Year for a total of four (4) years. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling twenty one thousand and ninety four dollars ($21,094) shall be paid by the City to the Contractor per Fiscal Year. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million eighty four thousand three hundred and seventy six dollars ($1,084,376.). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty 30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. 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.)

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

postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 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.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Construction Contract Performance and Payment Bond.

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

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

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

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

8. Assignment.

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

9. Subcontracting.

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

10. Release.

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

11. Confidentiality.

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

12. Product of Service – Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of 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 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

14. Amendment.

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Change Orders.

Changes. The Contractor may only make changes or revisions within the Scope of Work as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in the Scope of Work;
2. Due date of any Deliverable, as outlined in the Scope of Work;
3. Compensation of any Deliverable, as outlined in the Scope of Work;
4. Agreement compensation, as outlined in Article 2; or
5. Agreement termination, as outlined in Article 4.

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:

The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:

1. the name of the person requesting the change;
2. a summary of the required change;
3. the start date for the change;
4. the reason and necessity for change;
5. the elements to be altered; and
6. the impact of the change.

The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

16. Merger.

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Professional Liability Insurance.

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

23. Other Insurance

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

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

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

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

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

24. 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

25. Indemnification.

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

26. New Mexico Tort Claims Act

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

27. 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.

28. Enforcement of Agreement.

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

29. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:
Public Utilities Department
Water Division
801 W. San Mateo
Santa Fe, NM 87504

To the Contractor:
Sub Surface Contracting Inc.
27A Paseo de River
Santa Fe, NM 87507

30. Authority.

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

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: Aug 4, 2021

CONTRACTOR:
SUB SURFACE CONTRACTING INC.

NAME

GENERAL MANAGER
TITLE

DATE: 6-17-2021

CRS# 02104256000
Registration # 46991

ATTEST:

Kristine Mihelcic
Kristine Mihelcic (Aug 4, 2021 14:46 MDT)

KRISTINE BUSTOS MIHIELCIC, CITY CLERK
GB MTG 07/28/2021

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 16, 2021 16:07 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FINANCES:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

5050395.572970 AJH
Org. Name/Org#. AJH

WTR1950536

GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024

Interim Agreement Report 2024-11-12

Created:	2024-11-12
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAApjATGnLxq3NOmSG08YbSOyQhD_Zc_zuk

Agreement History

Agreement history is the list of the events that have impacted the status of the agreement prior to the final signature. A final audit report will be generated when the agreement is complete.

"GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024" History

Document created by JAMES EDWARDS (jwedwards@santafenm.gov)
2024-11-12 - 2:56:51 PM GMT- IP address: 97.182.23.177

Document emailed to ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature
2024-11-12 - 2:59:45 PM GMT

Powered by Adobe Acrobat Sign

GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024

Final Audit Report 2024-11-12

Created:	2024-11-12
By:	Kristy Miera (kamiera@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhzi69-TfuhrCTZ5ZMtKTWKEN9Z-a9J0O

"GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024" History

Document created by Kristy Miera (kamiera@santafenm.gov)
2024-11-12 - 5:31:21 PM GMT- 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
2024-11-12 - 5:32:28 PM GMT

Email viewed by ALEXIS LOTERO (aclotero@santafenm.gov)
2024-11-12 - 5:41:58 PM GMT- IP address: 104.47.64.254

Document e-signed by ALEXIS LOTERO (aclotero@santafenm.gov)
Signature Date: 2024-11-12 - 5:42:33 PM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2024-11-12 - 5:42:33 PM GMT

Powered by Adobe Acrobat Sign

City of Santa Fe, New Mexico

memo

Date: February 24, 2025

To: **Public Works and Utilities Committee**
Finance Committee
Governing Body

Via: Jesse D. Roach, Water Division Director

From: Jonathan M. Montoya, SOS Section Manager
Michael R. Moya, T&D Section Manager
Bill Huey, Water Division Engineer

Subject: Request to Amendment No. 1 to Price Agreement #21-0378 with A.A.C. Construction, LLC to Increase Maximum Compensation by $542,187.50 for a New Total Contract Amount of $1,626,562.50 including NMGRT. (Bill Huey, Engineer, bchuey@santafenm.gov).

Vendor Name: A.A.C. Construction, LLC

Vendor Number: 7958

ITEM AND ISSUE:

The Water Division requests approval of Approval of Amendment No. 1 to Price Agreement #21-0378 with A.A.C. Construction, LLC (AAC) to Increase Maximum Compensation by $542,187.50 for a New Total Contract Amount of $1,626,562.50 including NMGRT with No Corresponding Change to the Term of the Agreement. (Bill Huey, Engineer, bchuey@santafenm.gov).

Action Requested: Approval No. 2 to Price Agreement #21-0378

BACKGROUND AND SUMMARY:

The City Wide Water Utility Construction Contract is a multi-contractor on-call requirements contract, with the Water Division issuing work orders as needed for work such as water line replacements, and emergency repairs. In July 2021, the Governing Body approved ITB No. '21/37/B for $250,000.00 plus NMGRT per year for each of the contractor. Contract Amendment #2 for A.A.C. Construction, LLC has been approved for $542,187.50 raising the Contract Amount to $1,626,563.50.

AAC is one of the primary Emergency Response contractors for maim breaks. Historically December to March is the season for most main breaks A.A.C. Construction, LLC will not be able to respond

without additional funding provided in Contract Amendment #1. Water is requesting addition of $542,187.50 to A.A.C. Construction, LLC for a new Total Contract Amount of $1,626,563.50 including NMGRT for AAC.

This is a multi-contractor award ITB to set the applicable Bid Items for future work. Future work will be assigned under fully signed Work Orders for planned work on will be followed with a signed Work Order for Emergency Repair. The exact type of work required will be used to select from the applicable Bid Items.

PROCUREMENT METHOD:

ITB No. '21/37/B FY 21/22 City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 approved by City Council on 7/28/2021.

Chief Procurement Officer Approval: _____ **Date:** _____
Comment/Exceptions: _____

Supporting Information:

CONTRACT NUMBER:
The FY25 Munis contract number is 3202778 for AAC

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

The funding source is:
Fund Name/Number: Water Enterprise Fund 505
Munis Org Name/Number: Water CIP/5050395
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:** _____
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: Contract is used to repair main breaks and replace smaller sections of main.

Capital Project:

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

Project Ledger #: _____

Anticipated length of project: To be determined _____

Asset Manager Approval: Josie Bolden _____ **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:
Gina Wolff vawolff@santafenm.gov

ATTACHMENTS:

1. Amendment 1
2. COI
3. Original Contract

Item#_____
Munis Contract# 3202778
Original Contract Item# 21-0378
CIP #: 3057

CITY OF SANTA FE
AMENDMENT No. 1
TO ON CALL CITY-WIDE WATER UTILITY
CONSTRUCTION & REPAIR
PRICE AGREEMENT, #21-0378, CIP #3057

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE ON CALL CITY-WIDE WATER UTILITY CONSTRUCTION & REPAIR PRICE AGREEMENT, dated August 4, 2021 (the "Agreement"), 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 Agreement, Contractor has agreed to provide City-wide on-call construction services and repair for the Water Division of the City of Santa Fe.

B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to add five hundred, forty-two thousand, one hundred eighty-seven dollars and fifty cents ($542.187.50), inclusive of New Mexico Gross Receipts Tax (NMGRT), so that Article 2, paragraph A reads in its entirety as follows:

> The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed one million, six hundred twenty-six thousand, five hundred sixty-three dollars and fifty cents ($1,626,563.50) including NMGRT for a total of four (4) years. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million six hundred

twenty-six thousand five hundred and sixty-three dollars and fifty cents ($1,626,563.50). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT IN FULL FORCE.

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

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR:
A.A.C. Construction, LLC

Andrew Sisneros (Feb 6, 2025 15:33 MST)
Andrew Sisneros, President

DATE: Feb 6, 2025
CRS# 03-157349-00-5

ATTEST:

_____
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 6, 2025 15:38 MST)
_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

Client#: 2003588 AACCON2

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/17/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Isai Gomez	
USI Southwest Inc. NM - CL 4100 Osuna Road NE Suite 2-203 Albuquerque, NM 87109	PHONE (A/C, No, Ext): 602-374-1341	FAX (A/C, No):
	E-MAIL ADDRESS: isai.gomez@usi.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Donegal Mutual Insurance Company	13692
INSURED A.A.C. Construction, LLC 18 La Luna Rd Santa Fe, NM 87507	INSURER B : New Mexico Mutual Casualty Company	40627
	INSURER C : Admiral Insurance Company	24856
	INSURER D :	
	INSURER E :	
	INSURER F :	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X PD Ded:1,000 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	CPT9557153	01/01/2025	01/01/2026	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$2,000,000 $100,000 $5,000 $2,000,000 $4,000,000 $4,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY X SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY	X	X	1000111796	01/01/2025	01/01/2026	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$1,000,000 $ $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			CXL9557153	01/01/2025	01/01/2026	EACH OCCURRENCE AGGREGATE $	$3,000,000 $3,000,000 $
B	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	X	93890110	01/01/2025	01/01/2026	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $1,000,000 $1,000,000 $1,000,000
C	Professional Liab w/ Pollution			EO000062689	04/17/2024	04/17/2025	$2,000,000 Each Claim $2,000,000 Aggregate $5,000 Ded	

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

The General Liability and Automobile policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract or written agreement between the named insured and the certificate holder and with regard to work performed by or on behalf of the named insured. The Genreral Liability, Automobile, and Workers Compensation policies provide a Blanket Waiver of Subrogation in favor of the same, when required by written contract. The General

(See Attached Descriptions)

CERTIFICATE HOLDER

City of Santa Fe Water Division
801 W. San Mateo
Santa Fe, NM 87505

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

Liability policy contains a special endorsement with "Primary and Noncontributory" wording, when required by written contract.

RE: Various Jobs and Projects

City of Santa Fe, New Mexico

memo

Date: June 16, 2021

To: Public Works-Public Utilities Committee / Finance Committee

From: Jonathan M. Montoya, SOS Section Manager JM
Michael R. Moya, T&D Section Manager MM
Bill Huey, Water Division Engineer Associate BH

Via: Jesse D. Roach, Water Division Director JR
Shannon Jones, Public Utilities Department Director SJ

RE: Request to award bid number '21/37/B for the FY 20122 City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 to Sub Surface Contracting, Inc. and A.A.C. Construction, LLC. ; Request approval of a BAR- Budget Increase in the amount of $542,188.

ITEM AND ISSUE:

The Water Division requests award of bid number '21/37/B for the City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 to Sub Surface Contracting, Inc. and A.A.C. Construction, LLC for $250,000.00 plus NMGRT to each Contractor, per Fiscal Year. The Water Division is asking approval of a Budget Increase for FY 2022 to fund both contracts for FY 2022

BACKGROUND AND SUMMARY:

The City Wide Water Utility Construction Contract is an on-call requirements contract, with the Water Division issuing work orders as needed for work such as water line replacements, and emergency repairs. The contract is funded with $250,000 from Transmission and Distribution for work on their infrastructure and with $250,000 from Source of Supply for work on their infrastructure. Therefore, the initial Contract amount is limited to $500,000.00 plus New Mexico Gross Receipt Tax (NMGRT) per Fiscal Year.

This is was multi-contractor award ITB to set the applicable Bid Items for future work. Each Bid Amount exceeds funding for the contract and was only used to select the winning Contractors. Future work will be assigned under fully signed Work Orders for planned work on will be followed with a signed Work Order for Emergency repair. The exact type of work required will be used to select from the applicable Bid Items. Not every Bit Item is anticipated to be used.

The initial contract period is Fiscal Years 2021-2025. The bids for this project were opened on June 3, 2021 and were subsequently evaluated for completeness and accuracy. The low bid in the amount of $905,523.00 plus NMGRT was submitted by A.A.C. Construction, LLC. A second acceptable bid was submitted by Sub Surface Contracting, Inc. for $1,169,311.25. A summary of the bids is provided below:

Bidders	Total Bid without NMGRT	Bid Including Veterans preference without NMGRT
Engineer's Estimate	$699,249.70	
A.A.C. Construction, LLC	$905,523.00	
Sub Surface Contracting, Inc.	$1,169,311.25	$1,075,749.79

CONTRACT NUMBER:
The FY22 Munis contract number:
Sub Surface Contracting # 3202777
A.A.C Construction # 3202778.

FUNDING SOURCE:
The funding source is:
Water Enterprise Cash Balance/ CIP
FY 2022
Fund Name/Number: Water Enterprise Fund/ 500
Munis Org Name/Number: Water CIP / 5050395
Munis Object Name/Number: WIP Construction / 572970

RECOMMENDATION:

The Water Division recommends:

- Review and approval of award of contracts to A.A.C Construction, LLC and Sub Surface Contracting, Inc. for the City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 under ITB No. '21/37/B for $250,000.00 + NMGRT per Contractor, per Fiscal Year.

- Approval of the BAR – Budget Increase in the amount of $542,188 from the Water Enterprise Fund cash balance into the Water CIP fund for FY 2022.

- Forwarding and recommendation of approval of award and contract to the Finance Committee for their consideration and approval at the July 6, 2021 meeting and to the Governing Body for their final consideration and approval at the July 14, 2021 meeting.

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

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

DEPARTMENT / DIVISION NAME	DATE
PUD/Water/CIP	6/17/2021

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
Water CIP WIP Construction	5050395	572970	WTR1950536	542,188	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 542,188	$ -

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

Budget Increase from Cash Balance in Water Enterprise Fund for City Wide Construction

Price Agreements Award of Bid 21/37/B to A.A.C Construction and Sub Surface for

FY 2022

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
505	(542,188)
TOTAL:	**(542,188)**

Maya Martinez — 6/17/2021
Prepared By *{print name}* — Date

Division Director Signature *{optional}* — Date

Shannon Jones
Department Director Signature — Date

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

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Andy Hopkins
Andy Hopkins (Jun 17, 2021 14:00 MDT)
Budget Officer — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

(Rev. 4/20)

City of Santa Fe
Central Purchasing Office

Price Agreement

Awarded Contractor(s): 1) Sub Surface Contracting, Inc. 2) A.A.C. Construction, LLC.	**Price Agreement Number:** **Payment Terms: Net 30**
Ship To: **All City of Santa Fe Departments and Political Subdivisions allowed by Law**	**F.O.B.: Destination**
Invoice To: **City of Santa Fe** **Accounts Payable** **PO Box 909** **Santa Fe, NM 87504-0909**	**Term: July 1, 2021 to June 30, 2025** **Delivery: As requested by Department**

Title: City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057

This Price Agreement is to be awarded pursuant to the respective Invitation to Bid (ITB) 21/37/B and shall become a part thereof.

This Price Agreement is made subject to the "terms and conditions" as indicated on subsequent price agreement articles and construction contract pages.

Instructions to Supplier:

- By commencing under this Price Agreement (Agreement), the Contractor agrees to all terms and conditions within and attached and agrees that if there is a conflict with the Contractors terms, the City of Santa Fe's terms and conditions shall govern. In cases of discrepancy between the work order, purchase order and this Agreement, the terms and conditions of this Agreement shall prevail.
- Do not fill orders for goods/services not listed in this Agreement.
- Orders against this Agreement must be placed with as a separate contract work order with a purchase order.
- Do not fill orders without a valid quote, purchase order work order.
- The purchase order release number must be on all invoices.
- The City of Santa Fe (City) will not be liable for purchases made by unauthorized individuals.

Please forward all original invoice(s) to the Accounts Payable Department at PO Box 909, Santa Fe, NM 87504-0909

Instructions to Requesting Department:

- Do not place orders for goods/services not listed in the Procurement Contract.
- To place an order against this Procurement Contract, issue a Purchase Order Release before placing the order with the Supplier.

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

Terms and Conditions

General: When the City or the Requesting Department issues a contract or a purchase order release, a binding contract is created.

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

Assignment:

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

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

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

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

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

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

Taxes: The unit price shall exclude all state taxes.

Default: The City reserves the right to cancel all or any part of this order without cost to the City, if the Contractor fails to meet the provisions of this order 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 of

the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

Non-Collusion: In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Chief Procurement Officer or his/her designee.

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

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

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

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

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

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

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

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

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

ARTICLES

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

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

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

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

Article IV – Shipping and Billing Instructions
Delivery shall be as called for by the Requesting Department. Shipment shall be made only against specific orders which the Requesting Department may place with the Contractor during the term. Contractor shall ship in accordance with the following instructions:

a. The Contractor shall enclose a packing list with each shipment listing the City's purchasing document number and the Contractor's name, Requesting Department's contact name and location shall be shown on each packing and delivery ticket, package, bill of lading, the commercial parts number (if any) for each item and other correspondence in connection with the shipments. The Requesting Department's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.

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

c. Invoices must be submitted to the City's **Accounts Payable** and NOT the Central Purchasing Office.

If Contractor is unable to meet stated delivery the City's Chief Procurement Officer or his/her designee must be notified.

Article V – Termination
The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement. Contractor shall give the 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.

Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

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

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

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/ or personal injury(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.

Contractor shall provide all insurance necessary to employees on the work site, including but not limited to Worker's Compensation.

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

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

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

Article XI – Wage Rates
Pursuant to the requirements of any Contract entered into that will have a Work Order (WO) in excess of sixty thousand dollars ($60,000) for construction is subject to the minimum wage rate determination issued by the New Mexico Department of Work Force Solutions for this project/WO.

Item# 21-0378
Munis Contract#_____

CITY OF SANTA FE

ON CALL CITY-WIDE WATER UTILITY CONSTRUCTION & REPAIR PRICE AGREEMENT, CIP # 3057

THIS AGREEMENT is made and entered into by and between the **CITY OF SANTA FE, NEW MEXICO**,hereinafter referred to as the "City," and **SUB SURFACE CONTRACTING, INC. AND A.A.C. CONSTRUCTION**, hereinafter referred to as the "Contractor" and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

1) The Contractor shall perform all the work required by Water Division, as required, on each Work Order (W/O) in the Contract Documents (attached) for City-Wide Water Construction & Repair Contract. The work consists of, but is not limited to furnishing all equipment, labor and materials for the construction and repair of water mains, valves, hydrants, metered water service lines and settings, pressure reducing valves, vaults, and other incidental work such as pavement removal and replacement, traffic control all as required to extend, replace or repair water distribution, water storage, and water supply infrastructure, in accordance with the drawings, specifications, W/O, attached price sheets and other Contract Documents. All water piping shall be new, poly-wrapped ductile iron, unless otherwise specified.

2) The Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

3) The Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of the work.

4) The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.

5) The Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

6) Incorporation by Reference. All exhibits, addenda, schedules of ITB 21/37/B attached hereto and all certificates, work order documents, drawings, as-builts and other instruments contemplated to be delivered hereunder are hereby expressly made a part of this Agreement as fully as though set forth herein, and all references to this Agreement herein or in any of such writings shall be deemed to refer to and include all of such writings. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. If there is any conflict between such exhibits or addenda and the terms of this Agreement, such exhibits or addenda shall control.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed two hundred and fifty thousand dollars ($250,000) excluding gross receipts tax per Fiscal Year for a total of four (4) years. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling twenty one thousand and ninety four dollars ($21,094) shall be paid by the City to the Contractor per Fiscal Year. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million eighty four thousand three hundred and seventy six dollars ($1,084,376.). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty 30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. 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.)

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

postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 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.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Construction Contract Performance and Payment Bond.

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

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

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

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

8. Assignment.

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

9. Subcontracting.

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

10. Release.

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

11. Confidentiality.

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

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of 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 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

14. Amendment.

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Change Orders.

Changes. The Contractor may only make changes or revisions within the Scope of Work as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in the Scope of Work;
2. Due date of any Deliverable, as outlined in the Scope of Work;
3. Compensation of any Deliverable, as outlined in the Scope of Work;
4. Agreement compensation, as outlined in Article 2; or
5. Agreement termination, as outlined in Article 4.

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:

The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:

1. the name of the person requesting the change;
2. a summary of the required change;
3. the start date for the change;
4. the reason and necessity for change;
5. the elements to be altered; and
6. the impact of the change.

The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

16. Merger.

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Professional Liability Insurance.

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

23. Other Insurance

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

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

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

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

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

24. 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

25. Indemnification.

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

26. New Mexico Tort Claims Act

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

27. 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.

28. Enforcement of Agreement.

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

29. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:
Public Utilities Department
Water Division
801 W. San Mateo
Santa Fe, NM 87504

To the Contractor:
Sub Surface Contracting Inc.
27A Paseo de River
Santa Fe, NM 87507

30. Authority.

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

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

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: Aug 4, 2021

CONTRACTOR:
SUB SURFACE CONTRACTING INC.

NAME

GENERAL MANAGER
TITLE

DATE: 6-17-2021

CRS# ●2104256●00
Registration # 46991

ATTEST:

Kristine Mihelcic
Kristine Mihelcic (Aug 4, 2021 14:46 MDT)

KRISTINE BUST●S MIHIELCIC, CITY CLERK
GB MTG 07/28/2021

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 16, 2021 16:07 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FINANCES:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

5●50395.572970 AJH
Org. Name/Org#. AJH

WTR1950536

PRICE SHEETS

Bid Item	Approx. QTY.	Unit	Article and Description	Unit Price	Item Price
Construction Items					
5	35	LF	2" PVC Water Main , cip, all lengths	$30.00	$1,050.00
10	35	LF	4" PVC Water Main , cip, <100'	$36.00	$1,260.00
15	100	LF	4" PVC Water Main , cip, >100'	$34.00	$3,400.00
20	50	LF	6" PVC Water Main, cip, <100'	$42.00	$2,100.00
25	150	LF	6" PVC Water Main, cip, <100'	$39.00	$5,850.00
30	75	LF	8" PVC Water Main , cip, <100'	$48.00	$3,600.00
35	200	LF	8" PVC Water Main , cip, >100'	$45.50	$9,100.00
40	35	LF	10" PVC Water Main, cip, <100'	$52.00	$1,820.00
45	100	LF	10" PVC Water Main , cip, >100'	$49.00	$4,900.00
50	50	LF	12" PVC Water Main, cip, <100'	$66.75	$3,337.50
55	150	LF	12" PVC Water Main , cip, >100'	$64.50	$9,675.00
60	50	LF	14" PVC Water Main , cip	$79.00	$3,950.00
65	50	LF	16" PVC Water Main , cip	$97.00	$4,850.00
70	50	LF	24" PVC Water Main, cip	$100.00	$5,000.00
75	35	LF	2" DI Water Main, cip, all lengths	$0.00	$0.00
80	50	LF	4" DI Water Main, cip, <100'	$57.50	$2,875.00
85	100	LF	4" DI Water Main , cip, >100'	$56.00	$5,600.00
90	75	LF	6" DI Water Main, cip, <100'	$53.00	$3,975.00
95	250	LF	6" DI Water Main , cip, >100'	$51.00	$12,750.00
100	75	LF	8" DI Water Main , cip, <100'	$60.25	$4,518.75
105	250	LF	8" DI Water Main , cip, >100'	$58.00	$14,500.00
110	35	LF	10" DI Water Main, cip, <100'	$65.00	$2,275.00
115	100	LF	10" DI Water Main , cip, >100'	$63.00	$6,300.00
120	50	LF	12" DI Water Main , cip, <100'	$78.00	$3,900.00
125	100	LF	12" DI Water Main, cip, >100'	$74.00	$7,400.00
130	50	LF	14" DI Water Main , cip	$87.00	$4,350.00
135	50	LF	16" DI Water Main, cip	$101.00	$5,050.00
140	50	LF	24" DI Water Main , cip	$159.00	$7,950.00
145	75	LF	Extra Pay for Trench Depth, 6'-8'	$8.00	$600.00
150	50	LF	Extra Pay for Trench Depth , 8'-10'	$12.00	$600.00
155	25	LF	Extra Pay for Trench Depth, 10'-14'	$30.00	$750.00
160	20	CY	Rock Excavation	$220.00	$4,400.00
165	300	CY	Exploratory Excavation (as SDCW Approved)	$65.00	$19,500.00
170	75	CY	Imported Backfill (as SDCW Approved)	$24.00	$1,800.00
175	1000	LB	Fitting Installation	$4.00	$4,000.00
180	500	LB	Fitting Insertion	$34.00	$17,000.00
185	25	EA	4" Retainer Ring/ Bolt on Flange	$75.00	$1,875.00
190	50	EA	6" Retainer Ring/ Bolt on Flange	$105.00	$5,250.00
195	50	EA	8" Retainer Ring/ Bolt on Flange	$119.00	$5,950.00
200	20	EA	10" Retainer Ring/ Bolt on Flange	$121.00	$2,420.00
205	20	EA	12" Retainer Ring/ Bolt on Flange	$145.00	$2,900.00
210	20	EA	14" Retainer Ring/ Bolt on Flange	$179.00	$3,580.00
215	10	EA	16" Retainer Ring/ Bolt on Flange	$285.00	$2,850.00
220	25	EA	4"Joint Harness	$96.00	$2,400.00

225	50	EA	6" Joint Ha rness	$130.00	$6,500.00
230	50	EA	8" Joint Harness	$155.00	$7,750.00
235	20	EA	IO" Joint Harness	$160.00	$3,200.00
240	20	EA	12" Jo int Harness	$200.00	$4,000.00
245	20	EA	14" Joint Harness	$375.00	$7,500.00
250	10	EA	16" Joint Harness	$455.00	$4,550.00
255	10	CY	Concrete Thrust Blocking (as SDCW Approved)	$355.00	$3,550.00
260	2	EA	Tapping Sleeve w/ Tap, 4" X 4"	$1,400.00	$2,800.00
265	4	EA	Tapping Sleeve w/ Tap, 6" X 4" - 6"	$1,600.00	$6,400.00
270	4	EA	Tapp ing Sleeve w/ Tap, 8" X 4" - 8"	$1,800.00	$7,200.00
275	2	EA	Tapp ing Sleeve w/ Tap, IO " X 4" - IO "	$2,100.00	$4,200.00
280	4	EA	Tapping Sleeve w/ Tap, 12" X 4" - 1 2"	$2,300.00	$9,200.00
285	1	EA	Tapping Sleeve w/Tap, 20" X 4" - 20"	$4,200.00	$4,200.00
290	1	EA	Non-Pressurized Connections, 2" line	$2,500.00	$2,500.00
295	1	EA	Non-Preassurized Connections, 4"-10" line	$3,675.00	$3,675.00
300	1	EA	Non-Preassurized Connections, 12"-20" line	$4,100.00	$4,100.00
305	2	EA	2" CLI25 Gate Valves, cip.	$975.00	$1,950.00
310	2	EA	4" CLI25 Gate Valves, cip	$1,050.00	$2,100.00
315	5	EA	6" CLI25 Gate Valves, cip	$1,300.00	$6,500.00
320	5	EA	8" CLI25 Gate Va lves, cip.	$1,825.00	$9,125.00
325	1	EA	I O" CLI 25 Gate Valves, cip	$2,335.00	$2,335.00
330	2	EA	12" CLI25 Gate Va l ves, cip.	$2,800.00	$5,600.00
335	1	EA	2" CL250 Gate Va lves, cip.	$945.00	$945.00
340	1	EA	4" CL250 Gate Valves, cip	$1,925.00	$1,925.00
345	10	EA	6" CL250 Gate Valves, cip.	$2,050.00	$20,500.00
350	3	EA	8" CL250 Gate Va lves, cip.	$2,950.00	$8,850.00
355	1	EA	IO " CL250 Gate Va lves, cip.	$4,200.00	$4,200.00
360	1	EA	12" CL250 Gate Valves, cip,	$4,625.00	$4,625.00
365	1	EA	16" CL250 Gate Valves, cip.	$7,100.00	$7,100.00
370	1	EA	20" CL250 Gate Va lves, cip	$16,190.00	$16,190.00
375	1	EA	24" CL250 Gate Valves, cip.	$23,250.00	$23,250.00
380	1	EA	1 2" CL250 Butterfly Valves , cip	$2,800.00	$2,800.00
385	1	EA	16" CL250 Butterfly Va lves, cip	$4,850.00	$4,850.00
390	1	EA	20" CL250 Butterfly Valves, cip	$6,700.00	$6,700.00
395	1	EA	24" CL250 Butterfly Valves , cip.	$9,325.00	$9,325.00
400	5	EA	Fire Hydraut, 5' or less bury, cip.	$3,125.00	$15,625.00
405	2	EA	Fire Hydrant Extension, 6" or 12" length	$840.00	$1,680.00
410	1	EA	Fire Hydrant Extension, 18" or 24" length	$1,225.00	$1,225.00
415	1	EA	Fire Hydrant Remove & Relay	$800.00	$800.00
420	1	EA	Fire Hydrant Remove & Return	$575.00	$575.00
425	1	EA	2 1/4" Flush Hydrant	$1,565.00	$1,565.00
430	1	EA	2" Blow-Off Valve Installation	$1,340.00	$1,340.00
435	1	EA	2" Pressure Relief Va lve, cip	$6,830.00	$6,830.00
440	1	EA	3" Pressure Relief Valve , cip.	$7,075.00	$7,075.00
445	1	EA	4" Pressure Relief Valve, cip.	$8,195.00	$8,195.00
450	1	EA	6" Pressure Relief Valve, cip.	$10,950.00	$10,950.00

455	1	EA	8" Pressure Relief Valve, cip.	$15,525.00	$15,525.00
460	1	EA	12" Pressure Relief Valve, cip.	$29,725.00	$29,725.00
465	1	EA	Air & Vacuum Release Valve, 1"	$2,950.00	$2,950.00
470	1	EA	Air & Vacuum Release Valve, 2"	$4,140.00	$4,140.00
475	1	EA	Install City of Santa Fe Furnished Valve/ Meter, 2" - 4"	$450.00	$450.00
480	1	EA	Install City of Santa Fe Furnished Valve/ Meter, 6" - 8"	$550.00	$550.00
485	1	EA	Install City of Santa Fe Furnished Valve/ Meter, 10" - 12"	$750.00	$750.00
490	1	EA	Metered 2" Bypass - Vault Installation	$3,185.00	$3,185.00
495	20	EA	Valve Box, cip	$825.00	$16,500.00
500	5	EA	Valve Box Replacement	$975.00	$4,875.00
505	5	EA	Valve Box Removal of Existing	$450.00	$2,250.00
510	3	EA	Valve Box Adjustment	$625.00	$1,875.00
515	1	EA	Valve Stem Extension, 0' -4' Depth	$250.00	$250.00
520	4	VF	Precast 4' Diameter Pit w/ Lid Min. 4' Depth	$4,000.00	$16,000.00
525	8	VF	Precast 6' Diameter Pit w/ Lid Min. 4' Depth	$5,150.00	$41,200.00
530	8	VF	Precast 8' Diameter Pit w/ Lid Min. 4' Depth	$6,200.00	$49,600.00
535	7	CY	Cast-In-Place RCP Vault w/ Lid	$12,500.00	$87,500.00
540	1	EA	Prefabricated Vault, 4' X 8'	$8,995.00	$8,995.00
545	1	ACRE	Native Seeding	$2,275.00	$2,275.00
550	1	EA	Bollards (pair)	$1,200.00	$1,200.00
555	18	LF	4" Steel Casing	$95.00	$1,710.00
560	18	LF	4" PVC Casing	$85.00	$1,530.00
565	18	LF	14" Steel Casing	$225.00	$4,050.00
570	18	LF	16" Steel Casing	$240.00	$4,320.00
575	18	LF	18" Steel Casing	$275.00	$4,950.00
580	18	LF	22" Steel Casing	$330.00	$5,940.00
585	18	LF	26" Steel Casing	$400.00	$7,200.00
590	18	LF	28" Steel Casing	$475.00	$8,550.00
595	18	LF	30" Steel Casing	$425.00	$7,650.00
600	18	LF	36" Steel Casing	$460.00	$8,280.00
605	50	DIA-IN- LF	Bore & Jack Casing Pipe	$28.00	$1,400.00
610	18	LF	Open Cut Casing Pipe Installation, < 6' Deep	$39.00	$702.00
615	25	SY	Asphalt Pavement Removal & Disposal, < 2"	$65.00	$1,625.00
620	200	SY	Asphalt Pavement Removal & Disposal, 2"-6"	$65.00	$13,000.00
625	10	SY	Concrete Pavement Removal & Disposal, < 2"	$95.00	$950.00
630	10	SY	Concrete Pavement Removal & Disposal, 2" -6"	$110.00	$1,100.00
635	50	SY	Concrete Curb and Gutter Removal & Disposal	$29.00	$1,450.00
640	10	SY	Concrete Sidewalk Removal & Disposal	$30.00	$300.00
645	50	SY	Replace City Street Pavement w/o Laydown Machine, Virgin Asphalt	$75.00	$3,750.00
650	50	SY	Replace City Street Pavement w/o Laydown Machine, Recycled Asphalt	$75.00	$3,750.00
655	50	SY	Replace City Street Pavement with Laydown Machine, Virgin Asphalt	$265.00	$13,250.00
660	10	SY	Replace City Street Pavement with Laydown Machine, Recycled Asphalt	$265.00	$2,650.00

665	10	SY	Replace City Street Pavement with Temporary Cold Mix	$105.00	$1,050.00
670	100	SY	Replace Non-City Street Pavement w/o Laydown Machine, Virgin Asphalt	$75.00	$7,500.00
675	10	SY	Replace Non-City Street Pavement w/o Laydown Machine, Recycled Asphalt	$75.00	$750.00
680	10	SY	Replace Non-City Street Pavement with Laydown Machine, Virgin Asphalt	$265.00	$2,650.00
685	10	SY	Replace Non-City Street Pavement with Laydown Machine, Recycled Asphalt	$265.00	$2,650.00
690	1	SY	Replace Non-City Street Pavement with Temporary Cold Mix	$105.00	$105.00
695	10	SY	Replace Concrete Pavement	$290.00	$2,900.00
700	50	LF	Replace Concrete Curb & Gutter	$45.00	$2,250.00
705	10	SY	Replace Concrete Sidewalk	$190.00	$1,900.00
710	10	CY	Replace Gravel Surface, 0"-2"	$55.00	$550.00
715	10	CY	Replace Gravel Surface, 2"-4"	$65.00	$650.00
720	150	SY	Base course/Gravel (crushed or landscape), 0"-3"	$35.00	$5,250.00
725	50	SY	Base course /Gravel (crushed or landscape), 3"-6"	$45.00	$2,250.00
730	4	EA	Service, 3/4" Single, New Main	$1,650.00	$6,600.00
735	2	EA	Service, 3/4" Double, New Main	$1,975.00	$3,950.00
740	2	EA	Service, 1", New Main	$1,825.00	$3,650.00
745	1	EA	Service, 1 1/2", New Main	$3,590.00	$3,590.00
750	1	EA	Service, 2", New Main	$3,970.00	$3,970.00
755	5	EA	Service, 3/4" Single, Existing Main	$1,650.00	$8,250.00
760	2	EA	Service, 3/4" Double, Existing Main	$1,975.00	$3,950.00
765	1	EA	Service, 1", Existing Main	$1,825.00	$1,825.00
770	1	EA	Service, 1 1/2", Existing Main	$3,590.00	$3,590.00
775	1	EA	Service, 2", Existing Main	$3,950.00	$3,950.00
780	5	EA	Service Replacement, 3/4"	$1,850.00	$9,250.00
785	2	EA	Service Replacement, Double, 3/4"	$2,100.00	$4,200.00
790	1	EA	Service Replacement, 1"	$1,950.00	$1,950.00
795	1	EA	Service Replacement, 1 1/2"	$3,750.00	$3,750.00
800	1	EA	Service Replacement, 2"	$4,125.00	$4,125.00
805	3	EA	Meter Box Relocation/Replacement, 3/4"	$1,200.00	$3,600.00
810	1	EA	Meter Box Relocation/Replacement, 1"	$1,400.00	$1,400.00
815	1	EA	Meter Box Relocation/Replacement, 1-1/2"	$1,600.00	$1,600.00
820	1	EA	Meter Box Relocation/Replacement, 2"	$1,600.00	$1,600.00
825	5	EA	Service Transfer, 3/4"	$625.00	$3,125.00
830	2	EA	Service Transfer, 1"	$725.00	$1,450.00
835	1	EA	Service Transfer, 1 1/2"	$825.00	$825.00
840	1	EA	Service Transfer at Main, 2"	$850.00	$850.00
845	1	EA	Retire Existing Service at Main 3/4" - 2"	$725.00	$725.00
850	1	EA	Retire Existing Meter Box & Setting	$525.00	$525.00
855	1	EA	Adjust Meter Box To Grade	$450.00	$450.00
860	11	EA	Service Saddle, 3/4" Tap, 4"-12" Main	$650.00	$7,150.00
865	4	EA	Service Saddle, 1" Tap, 4"-12" Main	$775.00	$3,100.00
870	3	EA	Service Saddle, 1 1/2" Tap, 4"-12" Main	$950.00	$2,850.00

875	3	EA	Service Saddle, 2" Tap, 4"-12" Main	$1,075.00	$3,225.00
880	100	LF	Service Tubing, 3/4"	$33.50	$3,350.00
885	100	LF	Service Tubing, 1"	$36.25	$3,625.00
890	100	LF	Service Tubing, 1 1/2"	$44.00	$4,400.00
895	25	LF	Service Tubing, 2"	$53.00	$1,325.00
900	1	EA	Air and Vacuum Valve (individual)	$2,350.00	$2,350.00
905	1	GROUP OF 10	Air and Vacuum Valve (individual)	$21,250.00	$21,250.00
910	1	EA	Automatic Flushing Valve	$6,235.00	$6,235.00
915	$20,000	EA	Materials Mark-Up Over Invoice	$20,000.00	$20,000.00
920	$8,000	EA	Traffic Control Mark-Up Over Invoice	$8,000.00	$8,000.00
925	1	Allow	Street Cut Permits	$375.00	$375.00
930	1	EA	Project Signs	$450.00	$450.00
935	10	HR	Archeological Required Delay (After 2 hrs)	$375.00	$3,750.00
940	1	LS	Archeological Required Mob/Demob	$450.00	$450.00
EMERGENCY REPAIR					$
9000	175	HR	Supervisor's Truck with tools	$35.00	$6,125.00
9100	80	HR	Backhoe Skid Steer	$58.00	$4,640.00
9200	8	HR	Compressor with tools	$55.00	$440.00
9300	16	HR	Dump Truck	$60.00	$960.00
9400	4	HR	Pump	$30.00	$120.00
9500	300	HR	Laborer	$43.00	$12,900.00
9600	200	HR	Pipe Fitter	$45.00	$9,000.00
9700	200	HR	Equipment Operator	$58.00	$11,600.00
9800	175	HR	Foreman	$70.00	$12,250.00
9900	$5,000	EA	Rental items Mark-Up over Invoice (multiply $5000 x your % for item Price)	$5,000.00	$5,000.00
9950	$20,000	EA	Materials Mark-Up Over Invoice (multiply $20,000 x your % for item Price)	$20,000.00	$20,000.00

25

Total of all item Prices (last column) $1,169,311.25

Base Bid - Contractor shall be chosen based on the total of all Bid Items, Item Price, as Bid, exclusive of Gross Receipts Tax:

One Million,One hundred Sixty Nine thousand & Three hundred & eleven Dollars & Twenty Five Cents $1,169,311.25

(use words)

4. The Bidder agrees that:

A. For all "normal " Work Orders (WO) the work to be performed under the WO shall commence not later than (10) consecutive calender days after the date of written Notice to Proceed. For all "emergency" Wos the Contractor shall be on site within 4-hours.

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202777

Contractor: Sub Surface Contracting

Description: City Wide Construction Price Agreement
WTR1950536

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: 7/1/21 Term End Date: 6/30/25

☑ Approved by Council Date: Pending

Contract / Lease: $250,000 per FY for 4 years excluding GRT

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: 21/37/B June 2021

Fran Dinaway (Jul 8, 2021 [illegible] MDT)

Purchasing Officer Review: Jul 8, 2021 Date:

Comment & Exceptions: Issued an RFP- award of PA for procuring

4. Funding Source: Water Enterprise Fund CIP Org / Object: 5050395.572970

Andy Hopkins (Jul 6, 2021 09:41 MDT)

Budget Officer Approval: Jul 6, 2021 Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Maya Martinez Phone # 4271

Email: mfmartinez@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

SUBSURF-01 DONISCHUK

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/20/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776
HUB International Insurance Services (SOW)
2905 Rodeo Park Drive East
Building 6, Suite 100
Santa Fe, NM 87505

CONTACT NAME: Michelle Vialpando
PHONE (A/C, No, Ext): (505) 992-1873 FAX (A/C, No): (866) 621-0427
E-MAIL ADDRESS: michelle.vialpando@hubinternational.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : ACUITY, A Mutual Insurance Company	14184
INSURER B : Builders Trust of New Mexico	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Sub Surface Contracting Inc
27A Paseo De River St
Santa Fe, NM 87507

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			Z75944	7/1/2020	7/1/2021	EACH OCCURRENCE	$ 1,000,000
	X PD Ded: $500						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 250,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 3,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 3,000,000
	[ ] OTHER:							$
A	AUTOMOBILE LIABILITY							
	X ANY AUTO						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS			Z75944	7/1/2020	7/1/2021	BODILY INJURY (Per person)	$
	X HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	[ ] UMBRELLA LIAB [X] OCCUR						EACH OCCURRENCE	$ 2,000,000
	X EXCESS LIAB [ ] CLAIMS-MADE			Z75944	7/1/2020	7/1/2021	AGGREGATE	$ 2,000,000
	[ ] DED [X] RETENTION $ 0							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [Y] (Mandatory in NH)	N / A		0692	1/1/2021	1/1/2022	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
A	Leased/Rented Eqpt			Z75944	7/1/2020	7/1/2021	Ded: $500 / Limit	200,000

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

CERTIFICATE HOLDER

City of Santa Fe
Public Utilities Department
801 West San Mateo
Santa Fe, NM 87505

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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The ACORD name and logo are registered marks of ACORD

SUBSURF-01 DONISCHUK

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DATE (MM/DD/YYYY) 5/20/2021

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2905 Rodeo Park Drive East
Building 6, Suite 100
Santa Fe, NM 87505

CONTACT NAME: Michelle Vialpando
PHONE (A/C, No, Ext): (505) 992-1873 FAX (A/C, No): (866) 621-0427
E-MAIL ADDRESS: michelle.vialpando@hubinternational.com

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INSURER A : ACUITY, A Mutual Insurance Company	14184
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INSURER C :	
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INSURED
Sub Surface Contracting Inc
27A Paseo De River St
Santa Fe, NM 87507

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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			Z75944	7/1/2021	7/1/2022	EACH OCCURRENCE	$ 1,000,000
	X PD Ded: $500						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 250,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 3,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 3,000,000
	[ ] OTHER:							$
A	AUTOMOBILE LIABILITY							
	X ANY AUTO						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS			Z75944	7/1/2021	7/1/2022	BODILY INJURY (Per person)	$
	X HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	[ ] UMBRELLA LIAB [X] OCCUR						EACH OCCURRENCE	$ 2,000,000
	X EXCESS LIAB [ ] CLAIMS-MADE			Z75944	7/1/2021	7/1/2022	AGGREGATE	$ 2,000,000
	[ ] DED [X] RETENTION $ 0							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [Y]	N / A		0692	1/1/2021	1/1/2022	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
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Santa Fe
Public Utilities Department
801 West San Mateo
Santa Fe, NM 87505

CANCELLATION

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AUTHORIZED REPRESENTATIVE

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The ACORD name and logo are registered marks of ACORD

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

BUSINESS REGISTRATION

Business Name: SUB SURFACE CONTRACTING INC.
DBA: SUB SURFACE CONTRACTING INC.

Business Location: 27 PASEO DE RIVER A
SANTA FE , NM 87507

Owner: SUB SURFACE CONTRACTING INC.

License Number: 46991

Issued Date: April 01, 2021

Expiration Date: April 01, 2022

CRS Number: 02104256000

License Type: Business License - Renewable

Classification: Contractor - Specialty

Fees Paid: $35.00

SUB SURFACE CONTRACTING INC.
27 A PASEO DE RIVER
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

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Sub Surface Contracting, Inc.

Procurement Title: 21/37/B City-Wide Water Utility Construction and Repair Price Agreement, CIP # 3057

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 Bill Huey Water Division, PUD

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: _____

Bill Huey

Public Utilities Dept / Water Division/Bill Huey — Engineer — 6/16/2021
Department Rep Printed Name (attesting that all information included) — Title — Date

Fran Duraway (Jul 8, 2021 10:22 MDT)

Chief Procurement Officer — Jul 8, 2021
Purchasing Officer (attesting that all information is reviewed) — Title — Date

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

*

Signature: Michael Moya

Email: mrmoya@santafenm.gov

Signature: Jonathan Montoya
Jonathan Montoya (Jun 17, 2021 13:22 MDT)

Email: jmmontoya@santafenm.gov

(Rev. 4/20)

City of Santa Fe
Central Purchasing Office

Price Agreement

Awarded Contractor(s): 1) Sub Surface Contracting, Inc. 2) A.A.C. Construction, LLC.	**Price Agreement Number:** **Payment Terms: Net 30**
Ship To: **All City of Santa Fe Departments and Political Subdivisions allowed by Law**	**F.O.B.: Destination**
Invoice To: **City of Santa Fe** **Accounts Payable** **PO Box 909** **Santa Fe, NM 87504-0909**	**Term: July 1, 2021 to June 30, 2025** **Delivery: As requested by Department**

Title: City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057

This Price Agreement is to be awarded pursuant to the respective Invitation to Bid (ITB) 21/37/B and shall become a part thereof.

This Price Agreement is made subject to the "terms and conditions" as indicated on subsequent price agreement articles and construction contract pages.

Instructions to Supplier:

- By commencing under this Price Agreement (Agreement), the Contractor agrees to all terms and conditions within and attached and agrees that if there is a conflict with the Contractors terms, the City of Santa Fe's terms and conditions shall govern. In cases of discrepancy between the work order, purchase order and this Agreement, the terms and conditions of this Agreement shall prevail.
- Do not fill orders for goods/services not listed in this Agreement.
- Orders against this Agreement must be placed with as a separate contract work order with a purchase order.
- Do not fill orders without a valid quote, purchase order work order.
- The purchase order release number must be on all invoices.
- The City of Santa Fe (City) will not be liable for purchases made by unauthorized individuals.

Please forward all original invoice(s) to the Accounts Payable Department at PO Box 909, Santa Fe, NM 87504-0909

Instructions to Requesting Department:

- Do not place orders for goods/services not listed in the Procurement Contract.
- To place an order against this Procurement Contract, issue a Purchase Order Release before placing the order with the Supplier.

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

Terms and Conditions

General: When the City or the Requesting Department issues a contract or a purchase order release, a binding contract is created.

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

Assignment:

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

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

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

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

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

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

Taxes: The unit price shall exclude all state taxes.

Default: The City reserves the right to cancel all or any part of this order without cost to the City, if the Contractor fails to meet the provisions of this order 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 of

the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

Non-Collusion: In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Chief Procurement Officer or his/her designee.

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

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

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

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

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

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

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

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

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

ARTICLES

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

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

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

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

Article IV – Shipping and Billing Instructions
Delivery shall be as called for by the Requesting Department. Shipment shall be made only against specific orders which the Requesting Department may place with the Contractor during the term. Contractor shall ship in accordance with the following instructions:

a. The Contractor shall enclose a packing list with each shipment listing the City's purchasing document number and the Contractor's name, Requesting Department's contact name and location shall be shown on each packing and delivery ticket, package, bill of lading, the commercial parts number (if any) for each item and other correspondence in connection with the shipments. The Requesting Department's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.

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

c. Invoices must be submitted to the City's **Accounts Payable** and NOT the Central Purchasing Office.

If Contractor is unable to meet stated delivery the City's Chief Procurement Officer or his/her designee must be notified.

Article V – Termination
The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement. Contractor shall give the 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.

Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

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

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

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/ or personal injury(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.

Contractor shall provide all insurance necessary to employees on the work site, including but not limited to Worker's Compensation.

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

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

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

Article XI – Wage Rates
Pursuant to the requirements of any Contract entered into that will have a Work Order (WO) in excess of sixty thousand dollars ($60,000) for construction is subject to the minimum wage rate determination issued by the New Mexico Department of Work Force Solutions for this project/WO.

Item#_____
Munis Contract#_____

CITY OF SANTA FE

ON CALL CITY-WIDE WATER UTILITY CONSTRUCTION & REPAIR PRICE AGREEMENT, CIP # 3057

THIS AGREEMENT 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.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

1) The Contractor shall perform all the work required by Water Division, as required, on each Work Order (W/O) in the Contract Documents (attached) for City-Wide Water Construction & Repair Contract. The work consists of, but is not limited to furnishing all equipment, labor and materials for the construction and repair of water mains, valves, hydrants, metered water service lines and settings, pressure reducing valves, vaults, and other incidental work such as pavement removal and replacement, traffic control all as required to extend, replace or repair water distribution, water storage, and water supply infrastructure, in accordance with the drawings, specifications, W/O, attached price sheets and other Contract Documents. All water piping shall be new, poly-wrapped ductile iron, unless otherwise specified.

2) The Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

3) The Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of the work.

4) The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.

5) The Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

6) Incorporation by Reference. All exhibits, addenda, schedules of ITB 21/37/B attached hereto and all certificates, work order documents, drawings, as-builts and other instruments contemplated to be delivered hereunder are hereby expressly made a part of this Agreement as fully as though set forth herein, and all references to this Agreement herein or in any of such writings shall be deemed to refer to and include all of such writings. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. If there is any conflict between such exhibits or addenda and the terms of this Agreement, such exhibits or addenda shall control.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed two hundred and fifty thousand dollars ($250,000) excluding gross receipts tax per Fiscal Year for a total of four (4) years. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling twenty one thousand and ninety four dollars ($21,094) shall be paid by the City to the Contractor per Fiscal Year. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million eighty four thousand three hundred and seventy six dollars ($1,084,376.). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty 30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. 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.)

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

postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 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.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Construction Contract Performance and Payment Bond.

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

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

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

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

8. Assignment.

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

9. Subcontracting.

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

10. Release.

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

11. Confidentiality.

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

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of 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 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

14. Amendment.

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Change Orders.

Changes. The Contractor may only make changes or revisions within the Scope of Work as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in the Scope of Work;
2. Due date of any Deliverable, as outlined in the Scope of Work;
3. Compensation of any Deliverable, as outlined in the Scope of Work;
4. Agreement compensation, as outlined in Article 2; or
5. Agreement termination, as outlined in Article 4.

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:

The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:

1. the name of the person requesting the change;
2. a summary of the required change;
3. the start date for the change;
4. the reason and necessity for change;
5. the elements to be altered; and
6. the impact of the change.

The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

16. Merger.

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Professional Liability Insurance.

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

23. Other Insurance

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

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

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

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

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

24. 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

25. Indemnification.

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

26. New Mexico Tort Claims Act

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

27. 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.

28. Enforcement of Agreement.

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

29. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:
Public Utilities Department
Water Division
801 W. San Mateo
Santa Fe, NM 87504

To the Contractor:
A.A.C Construction LLC
18 La Luna Road
Santa Fe, NM 87507

30. Authority.

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

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

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE:_____

CONTRACTOR:
A.A.C Construction LLC

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: 2021.06.18 09:44:50 -06'00'

_____
NAME

Managing Member
TITLE

DATE: 6-18-2021

CRS# 03-157349-00-5
Registration # 222939

ATTEST:

_____
KRISTINE BUSTOS MIHIELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 16, 2021 16:06 MDT)

_____
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
MARY MCCOY, FINANCE DIRECTOR

5050395.572970 AJH
Org. Name/Org#.

WTR1950536

PRICE SHEETS

City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202778

Contractor: A.A.C Construction

Description: City Wide Construction Price Agreement
WTR1950536

Contract ☐ Agreement ☉ Lease / Rent ☐ Amendment ☐

Term Start Date: 7/1/21 Term End Date: 6/30/25

☑ Approved by Council Date: Pending

Contract / Lease: $250,000 per FY for 4 years excluding GRT

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: 21/37/B June 2021

Fran Dinaway (Jul 8, 2021 [illegible] MDT) Jul 8, 2021

Purchasing Officer Review: Date:

Comment & Exceptions: issued an RFP - award of a PA

4. Funding Source: Water Enterprise Fund CIP Org / Object: 5050395.572970

Andy Hopkins (Jul 6, 2021 09:41 MDT) Jul 6, 2021

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: Maya Martinez Phone # 4271

Email: mfmartinez@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: A.A.C. Construction, LLC

Procurement Title: 21/37/B City-Wide Water Utility Construction and Repair Price Agreement, CIP # 3057

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 Bill Huey, PUD/Water

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: _____

Public Utilities Dept / Water Division/Bill Huey	Bill Huey	Engineer	6/16/2021
Department Rep Printed Name (attesting that all information included)		Title	Date
Fran Dunaway (Jul 8, 2021 10:22 MDT)		Chief Procurement Officer	Jul 8, 2021
Purchasing Officer (attesting that all information is reviewed)		Title	Date

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

*

CERTIFICATE OF LIABILITY INSURANCE

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

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Susan Vance
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: svance@downeyandco.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Donegal Insurance Group	
INSURER B: New Mexico Mutual Casualty Company	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
A.A.C. Construction, LLC
18 La Luna Rd
Santa Fe NM 87507

COVERAGES **CERTIFICATE NUMBER:** 2021-2022 **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:			CPT9030765	01/01/2021	01/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG [ ]	$ 1,000,000 $ 100,000 $ 5,000 $ 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			CA9030765	01/01/2021	01/01/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) [ ]	$ 1,000,000 $ $ $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0			CXL9030765	01/01/2021	01/01/2022	EACH OCCURRENCE AGGREGATE [ ]	$ 3,000,000 $ 3,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		93890.105	01/01/2021	01/01/2022	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 500,000 $ 500,000 $ 500,000

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

CERTIFICATE HOLDER

CITY OF SANTA FE WATER DIVISION
801 W. SAN MATEO ROAD
SANTA FE NM 87505

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

Susan J. Vance

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of the Contractor are in addition to his obligations under Paragraph 4.18.

10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the City of Santa Fe and the City of Santa Fe's Representative.

10.2.7 The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for changes in the work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1. The Contractor shall carry insurance to protect the City of Santa Fe from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reasons of loss, injury or damage related to the Project. The Contractor shall file with the City of Santa Fe current certificates evidencing public liability insurance with limits as provided in the New Mexico Tort Claims Act, Section 41-4-19 NMSA 1978, and as that section or successors section may be amended from time to time. The contractor shall also carry such insurance as it deems necessary to protect it from all claims under any workmen's compensation law in effect that may be applicable to the Contractor. All insurance required by this Agreement shall be kept and remain in full force and effect for the entire life of this Agreement.

11.1.2. The insurance coverage shall include worker's compensation, employer's liability, comprehensive general liability (Premises-Operations, independent contractors, products and completed operations, broad form property damage, contractual liability, explosion and collapse hazard, underground Hazard, personal injury) comprehensive automobile liability (owned and hired), excess liability (umbrella form), and all-risk builder's risk.

11.1.3. All insurance coverage must be maintained for the entire life of the Project. Products and completed operations coverage shall be maintained for a minimum period of one (1) year after final payment.

11.1.4. A valid certificate of insurance must be submitted to the City of Santa Fe prior to issuance of a Notice-to-Proceed.

Type of Required Coverage	Minimum Limits of Liability
Workman's compensation (including accident and occupational disease coverage)	Statutory
Employer's Liability	$100,000
Comprehensive General Liability (including endorsements providing broad form property damage coverage, personal injury coverage, and contractual assumption of liability coverage for all liability the Contractor has assumed under his Contract).	Bodily injury liability: $500,000 each occurrence; $1,000,000 aggregate. Property damage liability: $500,000 each occurrence; $1,000,000 aggregate.
Auto Liability (including non-owned auto coverage)	Bodily injury liability: $500,000 each person; $1,000,000 each occurrence. Property damage liability: $1,000,000 each occurrence

11.1.5 Certificates of Insurance acceptable to the City of Santa Fe shall be filed with the City of Santa Fe prior to

commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days' prior written notice has been given to the City of Santa Fe. The Contractor shall furnish one (1) copy of each of the Certificates of insurance herein required for each copy of the Contract.

11.2 CITY OF SANTA FE'S LIABILITY INSURANCE

11.2.1 The City of Santa Fe shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against all claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 The Contractor shall maintain traditional course of construction insurance upon the work at the site for at least the actual cash value thereof. The traditional course of construction insurance shall cover the interests of the City of Santa Fe, the Contractor, Subcontractors, and Sub-subcontractors in the work. The insurance shall insure against at least the following perils: fire extended coverage, vandalism, malicious mischief, and flood insurance with a deductible of no more than $25,000. The Contractor shall bear the cost of such insurance and include its cost in the Bid.

11.3.2 Any loss insured under Subparagraph 11.3.1 is to be adjusted with the City of Santa Fe and made payable to the City of Santa Fe as trustee for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The City of Santa Fe shall deposit the proceeds in a separate account and shall distribute them in accordance with such agreement as the parties in interest, including the City of Santa Fe, may reach. The Contractor shall pay each Subcontractor a just share of any insurance proceeds which the Contractor receives and shall require by written agreement signed by the Subcontractor that the Subcontractor will make payments to his Sub-subcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order.

11.3.3 To the extent permitted under their respective property insurance policies, the City of Santa Fe and the Contractor hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by Insurance obtained pursuant to this Article 11 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such Insurance held by the City of Santa Fe as trustee. The City of Santa Fe or the Contractor, as appropriate, shall require the City of Santa Fe's Representative, other Contractors, Subcontractors, and Sub-subcontractors to similarly waive rights of subrogation or property insurers.

11.3.4 If the City of Santa Fe finds it necessary to occupy use of any portion of the work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the City of Santa Fe and the Contractor and, if required by the applicable insurance or self-insurance coverage not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Contractor's consent to such occupancy or use shall not be unreasonably withheld.

11.4 LOSS OF USE INSURANCE

11.4.1 The City of Santa Fe, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

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: 03157349-00-5

Owner: Andrew Sisneros

License Number: 222939

License Type: Business License - Renewable

Issued Date: June 07, 2021

Classification: Out of Jurisdiction Contractor - General

Expiration Date: June 07, 2022

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

CITY OF SANTA FE

The Purchasing Memo

Date: February 27, 2025

To: Governing Body and Public Works & Utilities Committee

From: Michael Dozier, Wastewater Management Division Director MD

Via: LeRoy Alvarado, Wastewater Management Division Operations Supervisor LA

Subject: Continued rental Agreement for (6) AIRE-O2 triton Aerators

Vendor Name: Newterra Corporation Inc.

Munis Vendor Number: 10618

ITEM AND ISSUE:

Public Utilities Department respectfully requests your review and approval of an Emergency procurement in the total amount of $249,984.00 excluding tax for a continuation of a 6 month rental of 6 Aerators for a term of six months with Newterra Corporation Inc.. Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of $249,984 from Public Utilities Cash Balance to WIP Construction .

CONTRACT NUMBER: The FY25 Munis contract number is 3250454.

BACKGROUND AND SUMMARY:

On August 30, 2024, the Department's engineering consultant Hazen and Sawyer identified the Paseo Real Wastewater treatment plant's (PRWWTP) limited process aeration capacity as a factor contributing to permit violations related to nitrogen and biochemical oxygen demand (BOD). Supplemental aeration was acquired to remove nitrogen and BOD, particularly when either one of PRWWTP's two aeration basins is offline. Currently one of the aeration basins is offline for repairs. Continued renting of this equipment ensures PRWWTP's aeration capacity to improve process performance and increase the probability of compliance with effluent nitrogen and BOD limits.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: WW Enterprise fund/500

Munis Org Name/Number: Wastewater Capital Projects/ 5000375

Munis Object Name/Number: WIP Construction/572970

Budget Officer / Designee: Andy Hopkins **Date:** 03/06/2025

Budget Officer Comment/Exceptions: -

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-127, Emergency

Chief Procurement Officer (CPO) / Designee: _____ **Date:** 03/06/2025

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Vehicles included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Construction to City Facilities, Furniture, and/or Fixtures included? ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Is this an externally funded purchase? ☐ Yes | ☒ No

If yes, what is the issuing agency: _____

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

Is this a Capital Asset or Project? ☐ Yes | ☒ No

Project Ledger Number: _____

Approval: _____ **Title:** _____ **Date:** _____

Comment/Exceptions: _____

ATTACHMENTS:

CPO Service Determination Email
Procurement document: Emergency Determination
Vendor's Quote
Certificate of Liability Insurance (COI)
General Services 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.

NOTE:
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 Management Division, City of Santa Fe

Acting Department Director: Jesse Roach
Department Contact: Steve Walker
Department Telephone Number: (505)955-4642
City of SF Chief Procurement Officer: Travis Dutton-Leyda
Telephone Number: (505) 629-8351

II. **Name of Contractor: Newterra Corporation, Inc.**

Address of Contractor: 4100 Peavey Road, Chaska, Minnesota, 53118
Amount of prospective contract: $249,984.00 (added to original of $199.770.00)
Term of prospective contract: 6 months (added to original of 4 months)
Location of Services: Paseo Real Water Reclamation Facility

III. **Please thoroughly list the services (scope of work), construction or items of tangible personal property of the contract:**

- Rental of Six (6) 60HP AIRE-O_2 Triton 2.0 Aerator units consisting of:
  - 60HP, 230/460 volt, 3-phase, 900 RPM, TEFC, premium efficiency motor
  - 10HP regenerative blower (SOTR = 162.2 lbs O2 / hr each)
  - Field replaceable, water-lubricated lower bearing
  - Field replaceable, water-resistant sleeve
  - 316 SS dual-blade primary PowerMix™ propeller

    - 304 SS Saturn Ring diffuser
    - 304 SS housing, mounting flange, and hollow shaft
    - *Note: Aerators shall arrive fully assembled for immediate mounting*
- Rental of Six (6) Float Assemblies, consisting of:
    - Eight (8) molded, LDPE, closed-cell foam filled pontoons
    - 304 SS rails and mounting hardware
    - Vortex shield attached to frame
    - *Note: Flotation devices require field assembly (Already completed)*
- Rental of Six (6) Standard 460V NEMA Outdoor Rated Manual On/Off Control Panels

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 July 10, 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.

The Public Utilities Department's engineering consultant, Hazen and Sawyer, identified the PRWRF's limited process aeration capacity as a factor contributing to permit violations related to nitrogen and biochemical oxygen demand (BOD). Renting the aerator units included in this procurement represented the fastest way to supplement PRWRF's aeration capacity, improve process performance, and increase the probability of compliance with effluent nitrogen and BOD limits. Although multiple companies manufactured the type of aerators required for this application, Newterra Corporation, Inc. (Newterra) was the only company that offered refurbished rental units. Since the lead time to purchase new units would result in further effluent permit violations, renting units was the preferred option. Since no other companies offered rental aerators suitable for this application, the rental units were procured through an emergency from Newterra.

This supplemental aeration capacity is needed to enhance the removal nitrogen and BOD, particularly when either of PRWRF's two aeration basins is offline for planned repairs. Returning these units prematurely with the PRWRF in its delicate time of recovery, runs the risk of the plant returning to non-compliance.

VI. **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 Department previously contracted a General Contractor to replace aeration diffusers and repair aeration piping in the North Aeration Basin. This process was held up by a stuck plug that prevented the aeration basin from being fully drained. The Department approved fabrication of the replacement diffusers in August. The Department used rental aerators to supplement aeration capacity in the South Aeration Basin while the North Aeration Basin diffusers and aeration piping were to be replaced. The Department will then move the rental aerators to the North Aeration Basin so the South Aeration Basin can be drained, inspected, repaired, and returned to service. The work to restore the aeration capacity of both aeration basins will be expedited to the greatest extent possible but will take at least 6 months to complete.

VII. **Describe what measures the Department will take in the future to prevent/mitigate use of emergency procurement under similar circumstances.**

The Department will expand the PRWRF preventative maintenance program to prevent future failures of aeration diffusers and piping. During this period of emergency rental, an Invitation to Bid will be worked on immediately to purchase our own set of aerators to use for emergencies such as this.

Certified by:

Travis Dutton-Leyda — 02/07/2025

City Chief Procurement Officer, Travis Dutton-Leyda — **Date**

City Approval by:

Jesse Roach — 02/03/2025

Acting Public Works Department Director, Jesse Roach — **Date**

Erin McSherry — 02/05/2025

City Attorney, Erin McSherry — **Date**

EMILY OSTER — 02/08/2025

Finance Director, Emily Oster — **Date**

Randy Randall
Randy Randall (Feb 10, 2025 11:26 MST) — Feb 10, 2025

Acting City Manager, Randy Randall — **Date**

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

Attachments:

Vendor's Quote – Matches the total requested for this emergency.

Reference: Original Emergency Determination - 40-M0087-24-EM027

Reference: Docket CWA-06-2024-1765; NPDES Permit NM0022292

PROJECT NUMBER: 2404920-C2-R4
DATE: January 30, 2025

TO: City of Santa Fe	**PROJECT NAME:** Santa Fe, NM **SCOPE:** Six (6) x 60HP Triton Rentals **DURATION:** Six (6) Months **SALES ENGINEER:** Jim Hentges / 952-556-5706 **REPRESENTATIVE:** Brian Dieke / 303-921-2846 Engineered Equipment Solutions

Newterra Corporation, Inc. is pleased to offer the following:

Six (6) 60HP AIRE-O_2 Triton® 2.0 Aerator, consisting of:

- 60HP, 230/460 volt, 3-phase, 900 RPM, TEFC, premium efficiency motor
- 10HP regenerative blower (SOTR = 162.2 lbs O_2 / hr each)
- Field replaceable, water-lubricated lower bearing
- Field replaceable, water-resistant sleeve
- 316 SS dual-blade primary PowerMix™ propeller
- 304 SS Saturn Ring diffuser
- 304 SS housing, mounting flange, and hollow shaft

  Note: Aerators shall arrive fully assembled for immediate mounting

Six (6) Eight-Float Assembly, consisting of:

- Eight (8) molded, LDPE, closed-cell foam filled pontoons
- 304 SS rails and mounting hardware
- Vortex shield attached to frame

  Note: Flotation devices require field assembly

Six (6) Standard 460V NEMA Outdoor Rated Manual On/Off Control Panel

Three (3) Year Warranty (See General Terms and Conditions)

Monthly rent for first six (6) month rental period	Subsequent months, up to an additional six (6) months
$41,664 per month	**$44,664 per month**

Total for first six (6) months rent is $249,984.00

Twelve Month Rental Contract ***– return freight of equipment not included***

EXCLUSIONS: Installation, duties, and taxes are not included. Cord grips, quick disconnects, and all items not specifically listed above are excluded.

NOTE: This is a continuation of the original return proposal. Equipment already on site and operating. Quotation valid for thirty (30) days.

1215 Chaska Creek Blvd • Chaska, Minnesota 55318 • USA
Telephone: (952) 448-6789 • Email: aiii@aireo2.com • Fax: (952) 448-7293

PAYMENT:	Net 30 Days from Shipment (Pending Credit Approval)
TERMS:	Must complete warranty card for warranty to apply. General Terms and Conditions Attached (5 Pages)

4100 Peavey Road • Chaska, Minnesota 55318 • USA
Telephone: (952) 448-6789 • Email: aiii@aireo2.com • Fax: (952) 448-7293

Aeration Industries International
a newterra company

4100 Peavey Rd.
Chaska, MN 55318
T: 952-448-6789 F: 952-556-5759

PAYMENT: Net 30 Days from Shipment (Pending Credit Approval)
TERMS: Must complete warranty card for warranty to apply. General Terms and Conditions Attached (5 Pages)

RENTAL AGREEMENT TERMS

1. Aire-O2 aeration equipment per attached scope
2. Customer is required to pay outgoing and return freight. Freight is not included in proposal.
3. Agreement is based on a six (6) month minimum rental period. Return of the equipment prior to six (6) months will result in minimum charge equal to the first six (6) month's fee.
4. Equipment must be pressure washed clean prior to shipping back equipment. Failure to do so will incur a minimum cleaning fee of $500.00 per unit.
5. A sixty (60) day written notice must be given by the customer prior to returning equipment

Project: 2404920-C2-R4 Rental – Six (6) 60HP Tritons, Floats & Control Panels
Date: January 30, 2025

Newterra Corporation		Customer	
Name (Print):	Jim Hentges	Name (Print):	
Title:	Lifecycle Sales	Title:	
Signature:		Signature:	
Date:	January 30, 2025		

Rental Return Checklist

Please Return Checklist with Units

- ☐ **Keep Crates/Packaging and Send Units Back in Original Crates**

- ☐ **Contact Sophia Johnson;** *johnson@newterra.com*, **for RMA# When Ready to Return**
  - *Send Prepaid via any carrier of your choice*
  - *Send 1215 Chaska Creek Blvd, Suite 400, Chaska, MN 55318*

- ☐ **Send pictures of packaged units to** sjohnson@newterra.com
  - Failure to do so will result in customer liability for damages

- ☐ **Pressure Wash Units, Floats, and Steel**
  - Try to avoid getting water into motor

- ☐ **Disassemble Float Assembly**

4100 Peavey Road ▫ Chaska, Minnesota 55318 ▫ USA
Telephone: (952) 448-6789 ▫ Email: aiii@aireo2.com ▫ Facsimile: (952) 448-7293

AIRE-O2® by newterra

Aire-O2® Triton® 2.0

Innovations in mechanical designs allow the Aire-O2 Triton 2.0 *(patents pending)* to provide better aeration efficiency, mixing capacity, and power consumption savings, as well as more seamless and flexible installation, operation and maintenance.

WHY CHOOSE TRITON 2.0?

- Mixing capacity increased by up to 54%
- Aeration efficiency increased by up to 20%
- Power consumption lowered by more than 18%
- Keyed connection enables easier installation and maintenance
- Fine bubble aeration with a mixing only option for BNR applications
- Easy retrofits and maintenance: no need to drain the tank or remove the equipment from the basin
- Performs in challenging, heavy debris conditions
- Operates for years with minimal maintenance
- Surface mounted, horizontal mixing provides better dispersion and directional control with no splashes or aerosols
- Certified by 3rd party oxygen transfer test following ASCE procedure

Aeration Industries® International, LLC.
4100 Peavey Road Chaska, MN | +1.952.448.6789 | aireo2.com | aii@aireo2.com

Aeration Industries International is a registered trademark of Newterra, Ltd. or its affiliates in the US and other countries.
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The Trusted Way to Deliver Oxygen

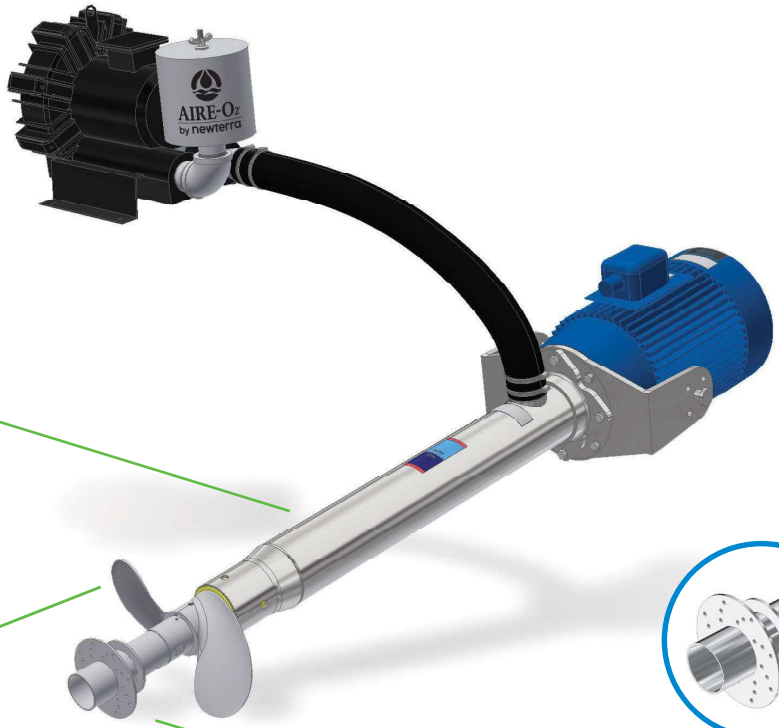
Keyed Connection

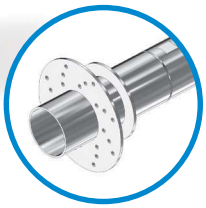
Keyed connected between the atomizer, propeller, and sleeve for easier installation and maintenance, as well as stronger connection and better longevity.

*Optimized Propeller**

Fully optimized propeller for better aeration efficiency and higher mixing capacity.

** Patent pending*





*Enhanced Atomizer**

Newly enhanced atomizer for optimized oxygen transfer.

** Patent pending*

FLEXIBLE MOUNTING SOLUTIONS

Wall Mount

Universal Mount

Bridge Mount

Float Mount

ADDITIONAL ACCESSORIES

- Anti-Erosion Baffle
- Guide Rail
- Swing Arm
- Davit Crane
- Vortex Shield
- Maintenance Platform
- Winch Mooring
- Float Support

**Consult your sales representative for selection assistance*

AIRE-O2 by newterra

Proudly Made In The USA

Aeration Industries® International, LLC.
4100 Peavey Road Chaska, MN | +1.952.448.6789 | aireo2.com | aii@aireo2.com

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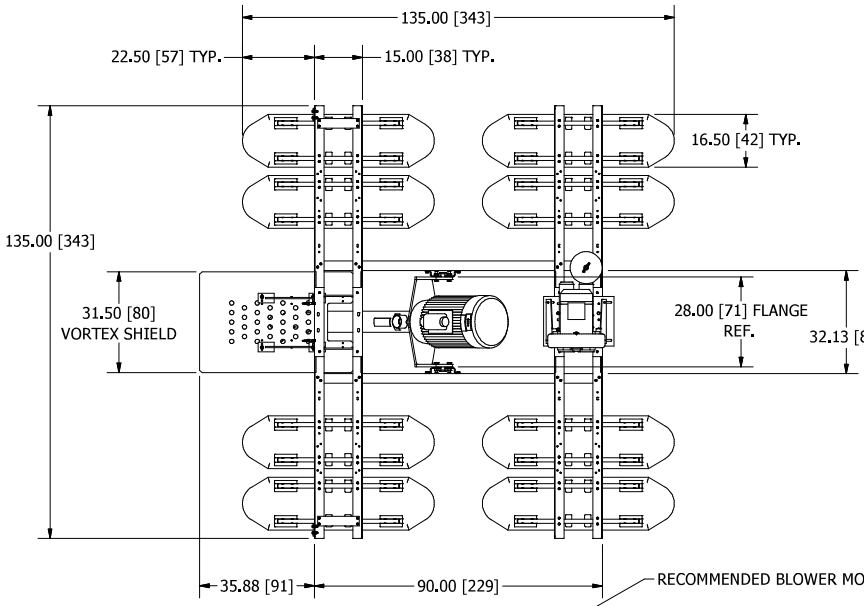
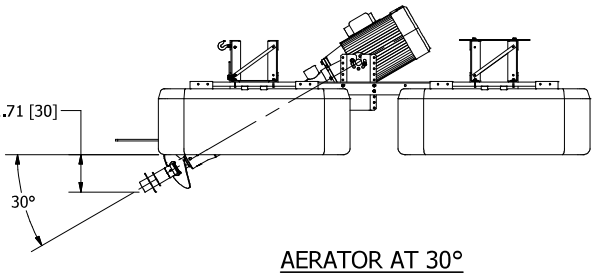
REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	15-2727	RELEASED FOR PRODUCTION	JFW	11-02-15
A	20-3157	ADDED SOLID VORTEX SHIELD ASSY	SS	10-21-20





AERATOR AT 30°

NOTE:
DIMENSIONS SHOWN IN [ ] ARE IN CENTIMETERS.

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DIMENSIONS AND TOLERANCES SHALL BE INTERPRETED IN ACCORDANCE WITH ANSI Y14.5•2009 STANDARDS

DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED

BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
•UNLESS NOTED OTHERWISE•
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06 | 2 PLACE ± 0.03 | 3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03 | 2 PLACE ± 0.01 | 3 PLACE ± 0.005

DRAWN: Jon Wickum
DATE: 11/18/2015
REVISED
DATE

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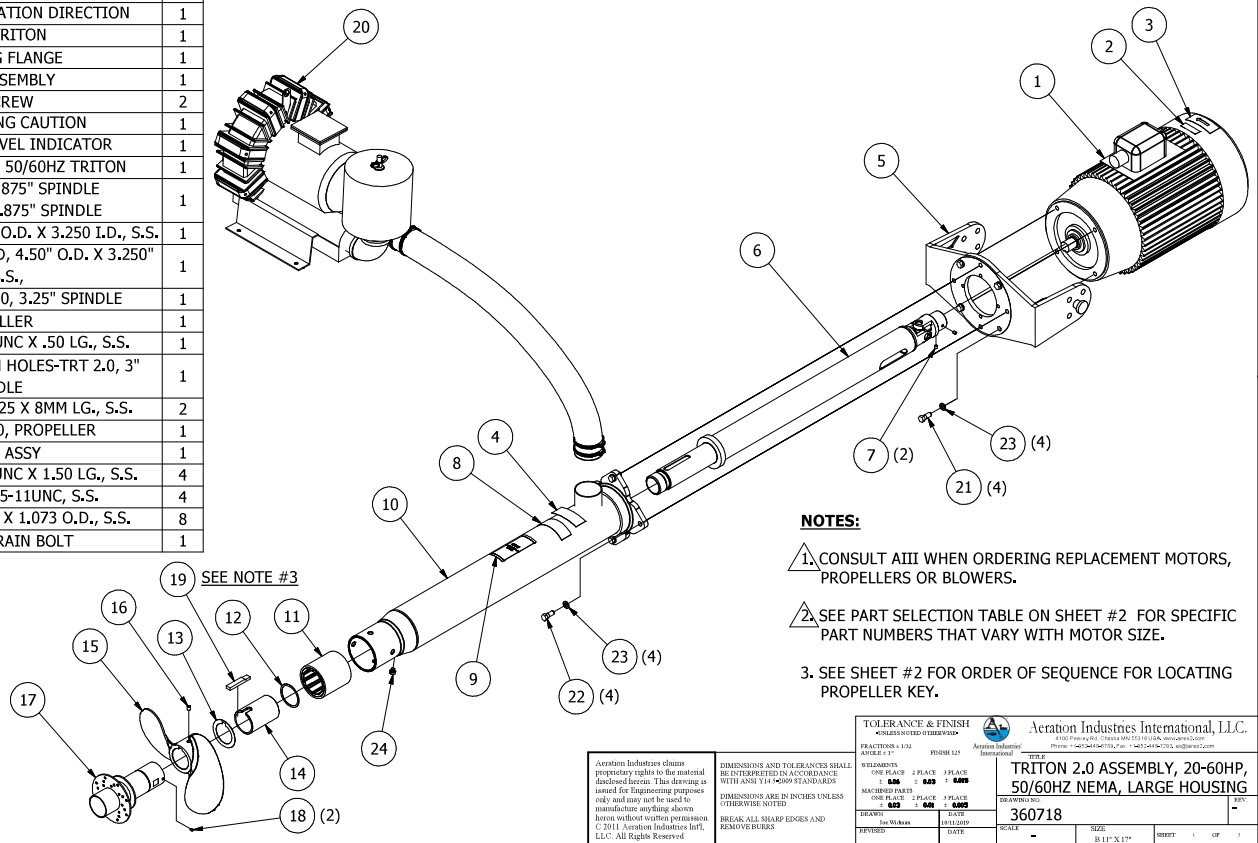
TITLE
OUTLINE DIMENSIONS - UNIVERSAL
8-FLOAT WITHOUT ROLLERS

DRAWING NO: 360-627
REV: A
SCALE: -
SIZE: B 11" X 17"
SHEET 1 OF 1

BILL OF MATERIAL			
ITEM	PART NO.	DESCRIPTION	QTY.
1	1	MOTOR 50/60HZ NEMA	1
2	224013	LABEL, SERIAL NO.	1
3	224152	LABEL, MOTOR ROTATION DIRECTION	1
4	224184	LABEL, TRITON	1
5	2	MOUNTING FLANGE	1
6	2	SHAFT ASSEMBLY	1
7	2	SET SCREW	2
8	224021	LABEL, BEARING CAUTION	1
9	224154	LABEL, WATER LEVEL INDICATOR	1
10	330107	HOUSING, 20-60HP, 50/60HZ TRITON	1
11	213054 213027	ARB BEARING, 2.875" SPINDLE CRB BEARING, 2.875" SPINDLE	1
12	215810	WASHER-TRT 2.0, 3.75" O.D. X 3.250 I.D., S.S.	1
13	215811	WASHER-TRT 2.0, KEYED, 4.50" O.D. X 3.250" I.D. S.S.,	1
14	247046	SDS SLEEVE-TRT 2.0, 3.25" SPINDLE	1
15	1	PROPELLER	1
16	215156	SET SCREW, .50-13UNC X .50 LG., S.S.	1
17	223106	ATOMIZER ASSY WITH HOLES-TRT 2.0, 3" SPINDLE	1
18	215331	SET SCREW, M8 X 1.25 X 8MM LG., S.S.	2
19	2	KEY-TRITON 2.0, PROPELLER	1
20	1	BLOWER ASSY	1
21	215150	BOLT HHCS, .625-11UNC X 1.50 LG., S.S.	4
22	2	BOLT HHCS, .625-11UNC, S.S.	4
23	215151	WASHER LOCK, .625 X 1.073 O.D., S.S.	8
24	215785	HOUSING DRAIN BOLT	1

REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	19-3074	RELEASED FOR PRODUCTION	JFW	10-8-19



NOTES:

1. CONSULT AIII WHEN ORDERING REPLACEMENT MOTORS, PROPELLERS OR BLOWERS.
2. SEE PART SELECTION TABLE ON SHEET #2 FOR SPECIFIC PART NUMBERS THAT VARY WITH MOTOR SIZE.
3. SEE SHEET #2 FOR ORDER OF SEQUENCE FOR LOCATING PROPELLER KEY.

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BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
•UNLESS NOTED OTHERWISE•
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06 | 2 PLACE ± 0.03 | 3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03 | 2 PLACE ± 0.01 | 3 PLACE ± 0.005

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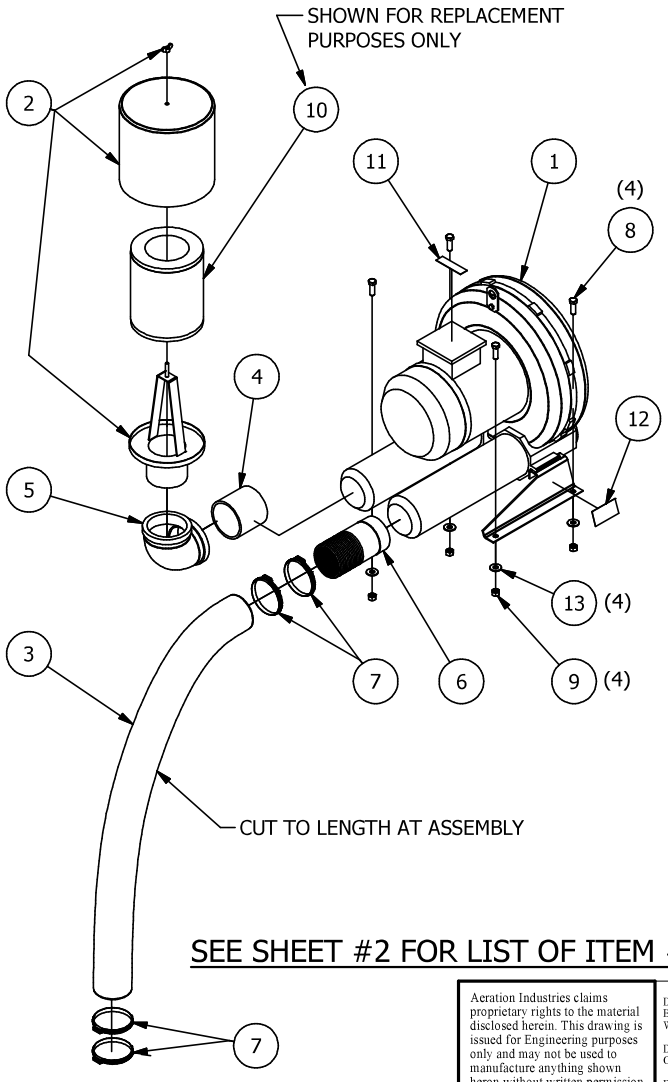
DRAWN: Jon Wickman
DATE: 10/11/2019
REVISED
DATE

TITLE: TRITON 2.0 ASSEMBLY, 20-60HP, 50/60HZ NEMA, LARGE HOUSING
DRAWING NO: 360718
REV: -
SCALE: -
SIZE: B 11" X 17"
SHEET 1 OF 3



SEE SHEET #2 FOR LIST OF ITEM #1

REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	17-2882	RELEASED FOR PRODUCTION	JFW	5-22-17
A	17-2897	ADDED 230130 TO ITEM 1	JH	8-18-17
B	18-2972	ITEM 4 & 5 QTY WAS 2	JH	7-20-18
C	20-3107	REDRAWN IN INVENTOR	JFW	2-6-20
D	21-3247	ADDED BLOWER PART NUMBERS 230148, 230149 AND 230150 TO ITEM #1	JFW	12-9-21
E	23-3315	ADDED BLOWER PART NUMBER 230062 TO ITEM #1	JFW	2-17-23
F	23-3332	ADDED BLOWER PART NUMBER 230153 TO ITEM #1	JFW	9-26-23
G	24-3339	ADDED BLOWER PART NUMBER 230154 TO ITEM #1	JFW	2-22-24

ITEM	PART NO.	DESCRIPTION	QTY.
13	215130	WASHER-FLAT, .50" S.S.	4
12	224167	DO NOT OPERATE LABEL	1
11	224153	BLOWER ROTATION LABEL	1
10	230040	FILTER ELEMENT, REPLACEMENT, 800 SCFM	1
9	215093	NUT, LOCK, .50-13UNC S.S.	4
8	215099	SHCS, .50-13UNC X 1.50 LG. S.S.	4
7	221059	CLAMP, HOSE 4.0" CS PLTD	4
6	215636	ADAPTER, 4.0 MPT X 4.0 HOSE, CS PLTD	1
5	215670	ELBOW-90 DEG., 4.0 FPT CS CTD	1
4	215681	NIPPLE, 4.0 MPT X 4.0 LG CS CTD	1
3	108030	HOSE, AIR DUCT, 4.0"	6'
2	230038	FILTER ASSY, INLET, 800 SCFM, 4.0"	1

BILL OF MATERIAL

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BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06 2 PLACE ± 0.03 3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03 2 PLACE ± 0.01 3 PLACE ± 0.005

DRAWN Joe Widman DATE 2/5/2020
REVISED DATE

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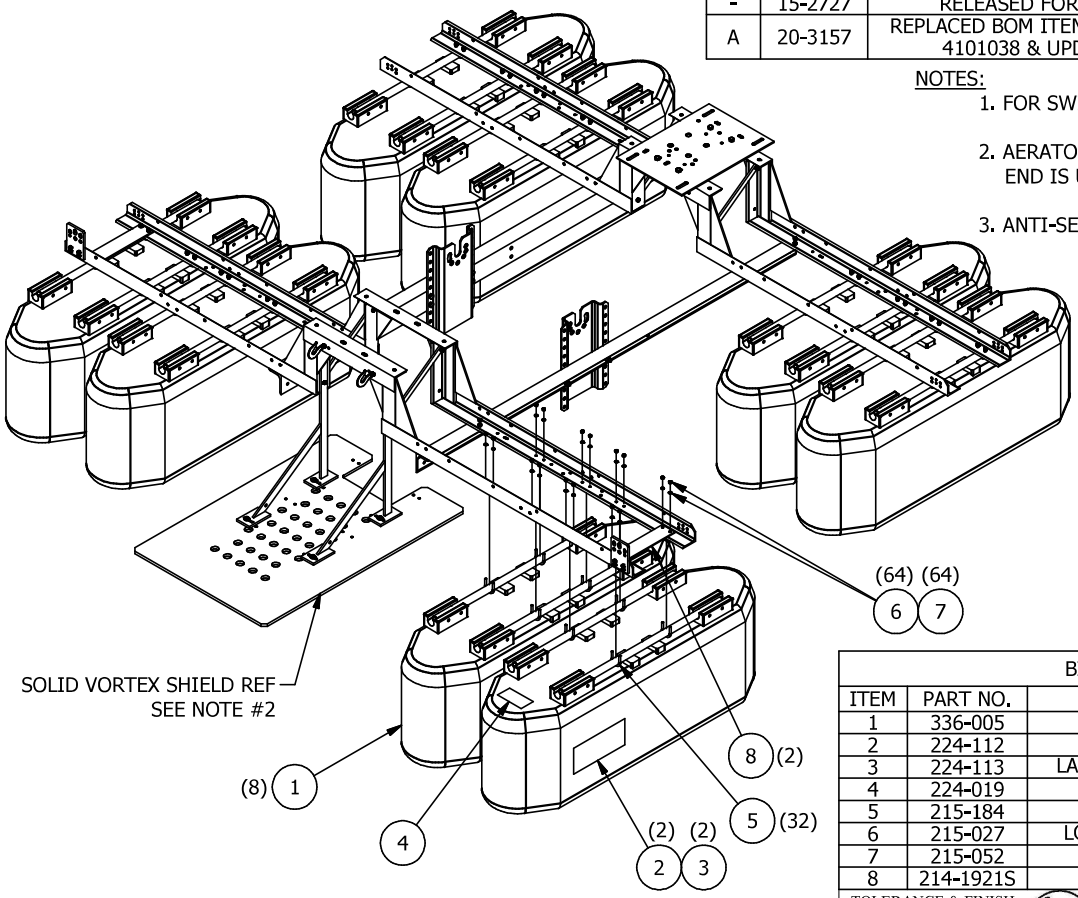
TITLE
ASSEMBLY DRAWING K09-MS, K10-MS, K11-MS, E11-MS & E12-MS BLOWER

DRAWING NO. 360690 REV. G
SCALE - SIZE A4 SHEET 1 OF 2

REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	15-2727	RELEASED FOR PRODUCTION	JFW	11-02-15
A	20-3157	REPLACED BOM ITEM 14, 410949 WITH 4101038 & UPDATED MODEL	SS	10-14-20

NOTES:

1. FOR SWING ARM OPTION SEE SHEET #3.
2. AERATOR SHOULD BE MOUNTED SO PROPELLER END IS UNDER VORTEX SHIELD.
3. ANTI-SEIZE IS REQUIRED ON ALL HARDWARE.



BILL OF MATERIAL			
ITEM	PART NO.	DESCRIPTION	QTY.
1	336-005	PONTOON ASSY. S.S.	8
2	224-112	LABEL, PHONE # DOMESTIC	2
3	224-113	LABEL, PHONE # INTERNATIONAL	2
4	224-019	LABEL, FLOATATION SAFETY	1
5	215-184	U-BOLT, 5/16-18UNC S.S.	32
6	215-027	LOCK WASHER, 5/16-18UNC S.S.	64
7	215-052	HEX NUT, 5/16-18UNC S.S.	64
8	214-1921S	CROSS ARCH SUPPORT, S.S.	2

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06 | 2 PLACE ± 0.03 | 3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03 | 2 PLACE ± 0.01 | 3 PLACE ± 0.005

DRAWN: Joe Widman | DATE: 12/28/2015
REVISED | DATE

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TITLE
UNIVERSAL 8-FLOAT ASSEMBLY, WITHOUT ROLLERS, S.S.

DRAWING NO. 360-646S | REV. A
SCALE -
SIZE A4
SHEET 1 OF 3

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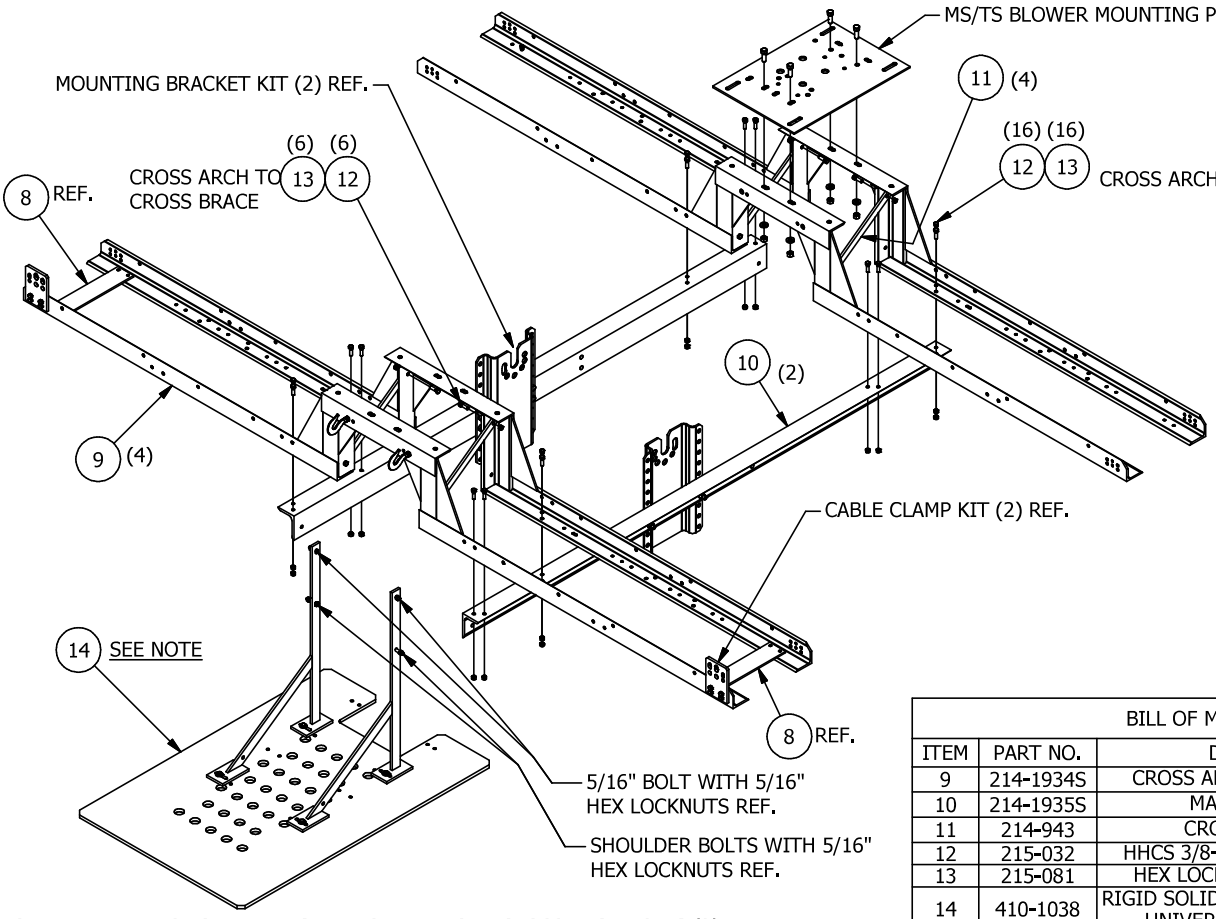
DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED

BREAK ALL SHARP EDGES AND REMOVE BURRS



NOTE: ITEM #14 IS TO BE ATTACHED TO THE FRONT CROSS ARCH USING (2) 5/16" BOLT WITH (2) 5/16" HEX LOCKNUTS AT THE UPPER HOLE LOCATION AND (2) SHOULDER BOLTS WITH (2) 5/16" HEX LOCKNUTS AT THE LOWER HOLE LOCATION. THIS HARDWARE IS PROVIDED IN THE VORTEX SHIELD ASSEMBLY.

BILL OF MATERIAL

ITEM	PART NO.	DESCRIPTION	QTY.
9	214-1934S	CROSS ARCH WELDMENT, S.S.	4
10	214-1935S	MAIN FRAME, S.S.	2
11	214-943	CROSS BRACE, S.S.	4
12	215-032	HHCS 3/8-16UNC X 1.25 LG. S.S.	22
13	215-081	HEX LOCKNUT 3/8-16UNC S.S.	22
14	410-1038	RIGID SOLID VORTEX SHIELD ASSY-UNIVERSAL 4-6-8-10 FLOAT	1

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BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06 2 PLACE ± 0.03 3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03 2 PLACE ± 0.01 3 PLACE ± 0.005

DRAWN Joe Widman DATE 12/28/2015
REVISED DATE

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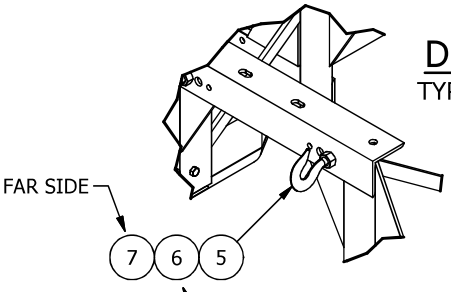
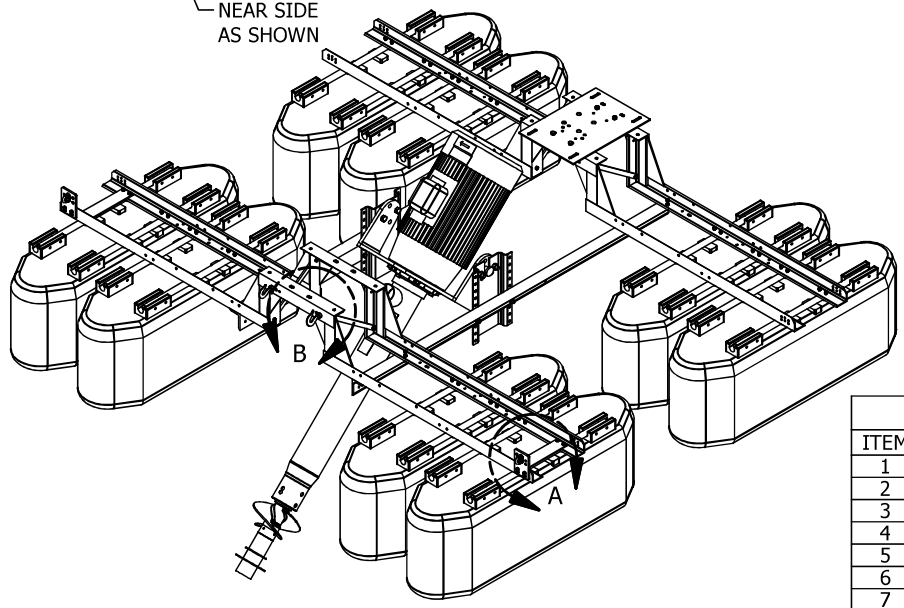
TITLE
UNIVERSAL 8-FLOAT ASSEMBLY, WITHOUT ROLLERS, S.S.

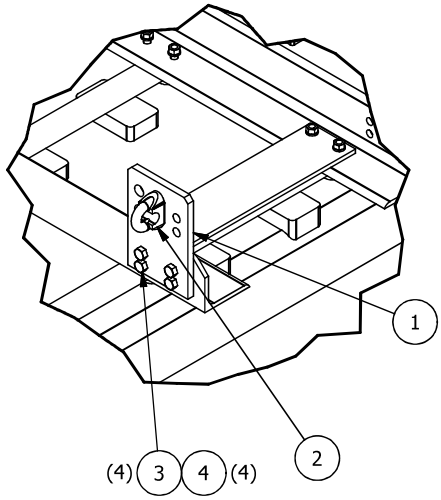
DRAWING NO. 360-646S
REV. A
SCALE -
SIZE A4
SHEET 2 OF 3

REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	16-2748	RELEASED FOR PRODUCTION	JFW	01-12-16



DETAIL B
TYP. (2) PLACES





DETAIL A
TYP. (2) PLACES

BILL OF MATERIAL			
ITEM	PART NO.	DESCRIPTION	QTY.
1	214-1942	CABLE MOUNT PLATE, S.S.	2
2	221-053	WIRE ROPE CLAMP, 5/8" S.S.	2
3	215-032	HHCS 3/8-16UNC X 1.25 LG. S.S.	8
4	215-081	HEX LOCKNUT, 3/8-16UNC S.S.	8
5	215-793	THREADED HOOK, 5/8" OPENING S.S.	2
6	215-204	HEX NUT, 5/8-11UNC S.S.	2
7	215-155	HEX LOCKNUT, 5/8-11UNC S.S.	2

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-

FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125

WELDMENTS
ONE PLACE ± 0.06
2 PLACE ± 0.03
3 PLACE ± 0.015

MACHINED PARTS
ONE PLACE ± 0.03
2 PLACE ± 0.01
3 PLACE ± 0.005

DRAWN: Joe Widman
DATE: 1/28/2016
REVISED
DATE

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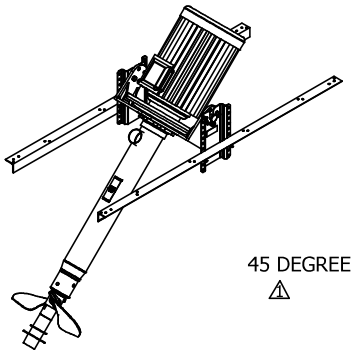
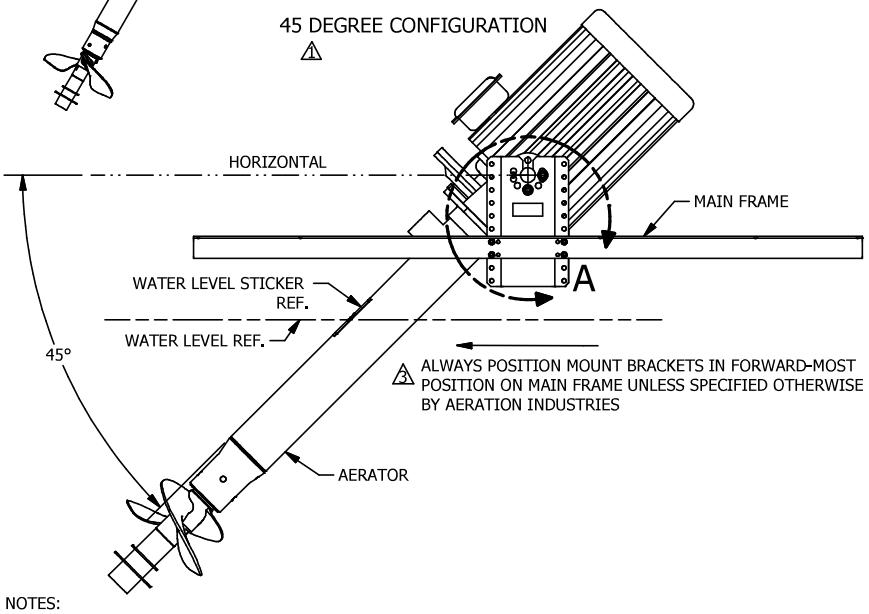
TITLE
DIRECT MOUNT KIT, 5/8"
UNIVERSAL FLOAT

DRAWING NO. 360-645
REV. -
SCALE -
SIZE A4
SHEET 1 OF 1

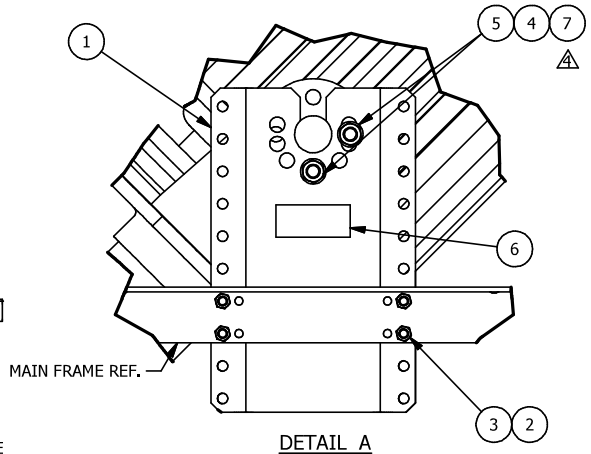
REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	20-3098	RELEASED FOR PRODUCTION	RPH	01/13/20
A	22-3253	UPDATE FOR FULL UNIVERSAL BRACKET CHANGE RELEASE	RPH	03/03/22



45 DEGREE CONFIGURATION
1



3 ALWAYS POSITION MOUNT BRACKETS IN FORWARD-MOST POSITION ON MAIN FRAME UNLESS SPECIFIED OTHERWISE BY AERATION INDUSTRIES



DETAIL A
MOUNT BRACKET ASSEMBLY

BILL OF MATERIAL			
ITEM	PART NO.	DESCRIPTION	QTY.
1	214908S 214908G	MOUNT BRACKET, UNIVERSAL, 22.5/28" FLANGE, S.S. MOUNT BRACKET, UNIVERSAL, 22.5/28" FLANGE, GALV.	2
2	215-099	HHCS, 1/2-13UNC X 1.50 LG. S.S.	8
3	215-093	HEX LOCKNUT, 1/2-13UNC S.S.	8
4	215-341	HHCS, 3/4-10UNC X 2.00 LG. S.S.	4
5	215-198	HEX LOCKNUT, 3/4-10UNC S.S.	4
6	224-017	DECAL, MOUNT BRACKET	1
7	215-369	WASHER, FLAT, 3/4"	4

NOTES:

1. AERATOR IS SHOWN POSITIONED AT 45° [STANDARD OPERATING ANGLE]. IF APPLICATION CALLS FOR 30° OR 60° OPERATION, BOLT PATTERN (5,4,7) MUST BE ADJUSTED TO ACCOMODATE ANGLE. MOUNT BRACKET (1) HEIGHT MUST ALSO BE ADJUSTED TO KEEP AERATOR AT PROPER DISTANCE FROM WATER LEVEL.

2. SEE SHEETS 2 AND 3 FOR BOLT PATTERN CONFIGURATION AND MOUNT BRACKET HEIGHT ADJUSTMENT.

3. ALWAYS POSITION MOUNT BRACKETS IN FORWARD-MOST POSITION ON MAIN FRAME.

4. WASHERS (ITEM 7) TO BE USED WITH SLOTS

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TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06
2 PLACE ± 0.03
3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03
2 PLACE ± 0.01
3 PLACE ± 0.005

DRAWN	DATE
Joe Widman	1/13/2016
REVISED	DATE
RPH	1/13/20

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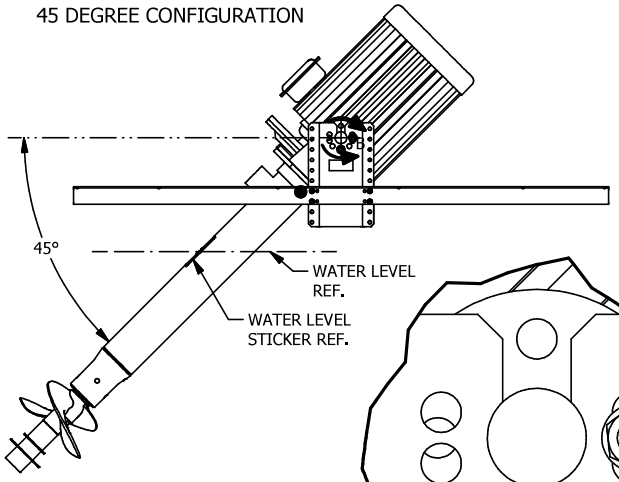
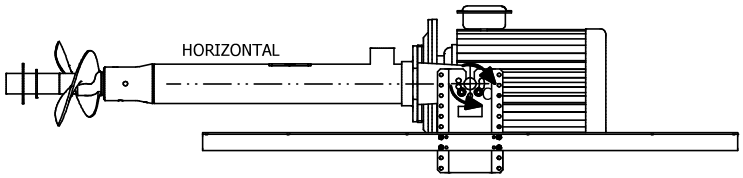
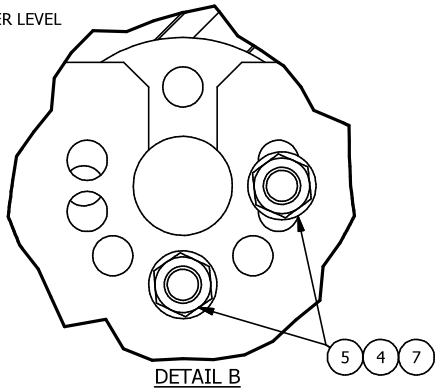
TITLE
DWG ASSY, MOUNT BRACKET KIT, 30/45/60°, 22.5/28" FLANGE

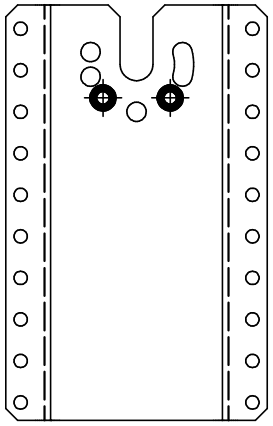
DRAWING NO.	REV.
360740	A
SCALE: -	SIZE: A4
SHEET 1 OF 3	

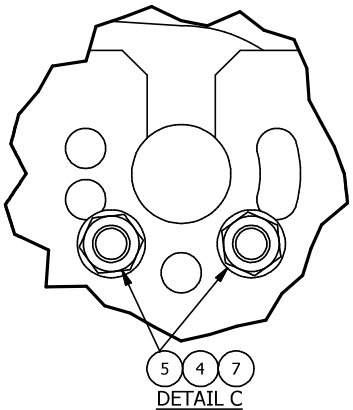




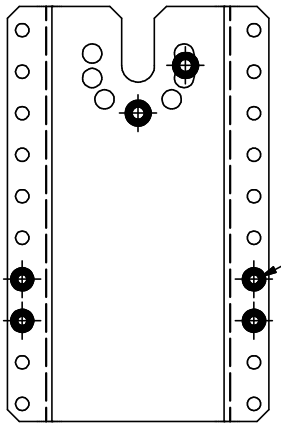


DETAIL B
HARDWARE CONFIGURATION
FOR 45 DEGREE OPERATION





DETAIL C
HARDWARE CONFIGURATION
MAINTENANCE POSITION



'STARTING POSITION' FOR 45 DEGREE OPERATION.
TRIAL ONE UNIT TO ENSURE WATER LEVEL IS AT CENTER OF WATER LEVEL STICKER. ADJUST HEIGHT AS NECESSARY. ONLY OPERATE WHEN WATER IS AT CENTER OF STICKER.

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DIMENSIONS AND TOLERANCES SHALL BE INTERPRETED IN ACCORDANCE WITH ANSI Y14.5-2009 STANDARDS

DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED

BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-

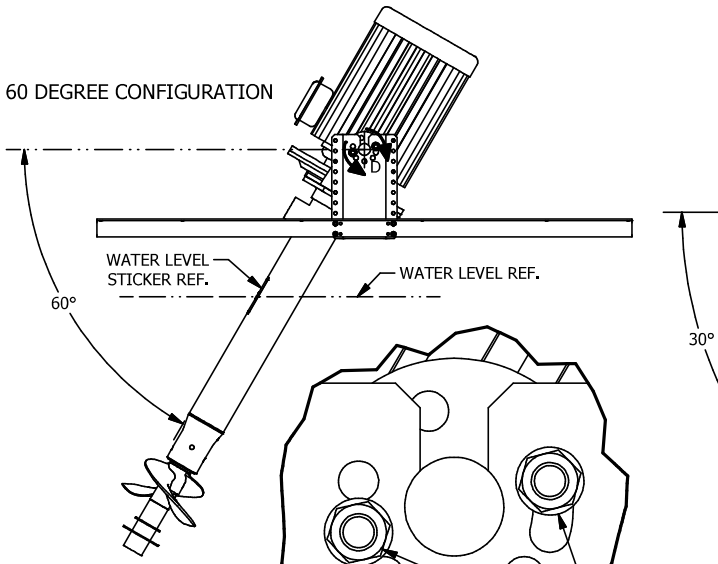
FRACTIONS ± 1/32 ANGLE ± 1°		FINISH 125	
WELDMENTS	ONE PLACE ± 0.06	2 PLACE ± 0.03	3 PLACE ± 0.015
MACHINED PARTS	ONE PLACE ± 0.03	2 PLACE ± 0.01	3 PLACE ± 0.005

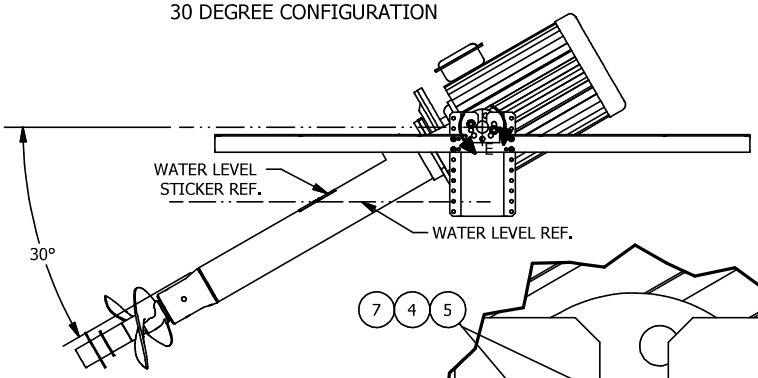
DRAWN Joe Widman	DATE 1/13/2016
REVISED	DATE

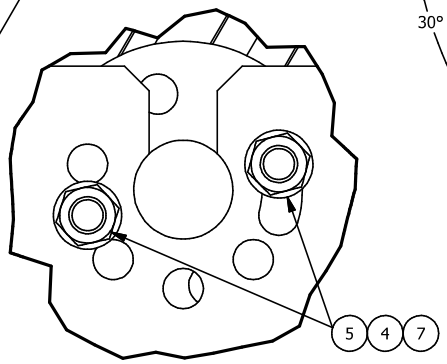
Aeration Industries International, LLC.
4100 Peavey Rd. Chaska MN 55318 USA. www.aireo2.com
Phone: +1-952-448-6789. Fax: +1-952-448-7293. air@aireo2.com

TITLE
DWG ASSY, MOUNT BRACKET KIT, 30/45/60°, 22.5/28" FLANGE

DRAWING NO. 360740		REV. A
SCALE -	SIZE A4	SHEET 2 OF 3

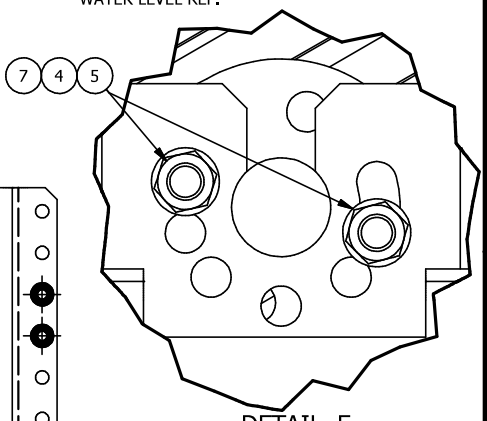






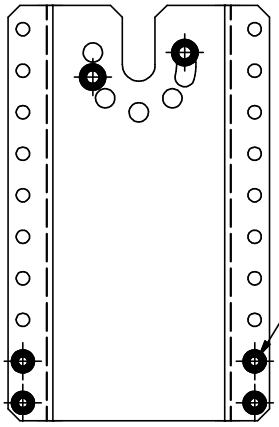
DETAIL D

HARDWARE CONFIGURATION
FOR 60 DEGREE OPERATION.

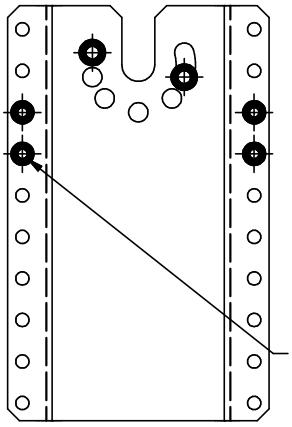


DETAIL E

HARDWARE CONFIGURATION
FOR 30 DEGREE OPERATION.



'STARTING POSITION' FOR 60 DEGREE OPERATION.
TRIAL ONE UNIT TO ENSURE WATER LEVEL IS AT CENTER
OF WATER LEVEL STICKER. ADJUST HEIGHT AS NECESSARY.
ONLY OPERATE WHEN WATER IS AT CENTER OF STICKER.



'STARTING POSITION' FOR 30 DEGREE OPERATION.
TRIAL ONE UNIT TO ENSURE WATER LEVEL IS AT CENTER
OF WATER LEVEL STICKER. ADJUST HEIGHT AS NECESSARY.
ONLY OPERATE WHEN WATER IS AT CENTER OF STICKER.

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BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-

FRACTIONS ± 1/32	ANGLE ± 1°	FINISH 125
WELDMENTS	ONE PLACE ± 0.06	2 PLACE ± 0.03
		3 PLACE ± 0.015
MACHINED PARTS	ONE PLACE ± 0.03	2 PLACE ± 0.01
		3 PLACE ± 0.005

DRAWN	DATE
Joe Widman	1/13/2016
REVISED	DATE

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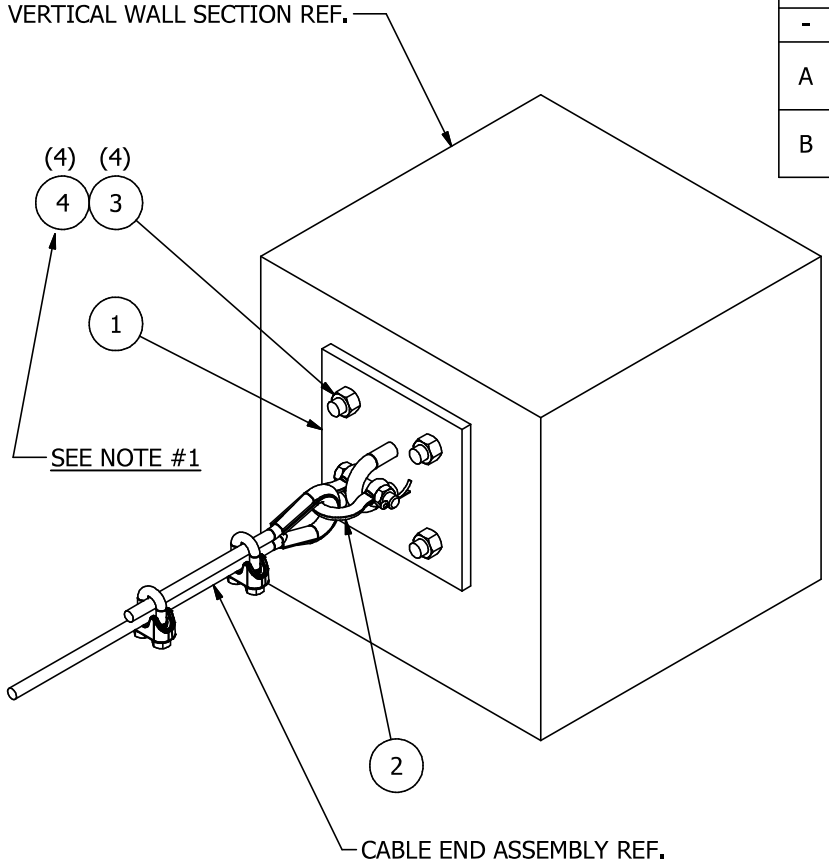
4100 Peavey Rd. Chaska MN 55318 USA. www.aireo2.com
Phone: +1-952-448-6789. Fax: +1-952-448-7293. air@aireo2.com

TITLE
DWG ASSY, MOUNT BRACKET KIT, 30/45/60°, 22.5/28" FLANGE

DRAWING NO.	REV.
360740	A

SCALE	SIZE	SHEET
-	A4	3 OF 3

REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	20-3129	RELEASED FOR PRODUCTION	SS	04-28-20
A	21-3232	ADDED GALVANIZED 3/4" SHACKLE ANCHOR PART #215-845	JFW	9-22-21
B	23-3329	REDRAWN IN INVENTOR AND ADDED SHEET #2	JFW	7-27-23



NOTES:

1. ONCE PARABOLT IS INSTALLED, REPLACE HEX NUT SUPPLIED WITH HEX LOCK NUT. (ITEM #4)
2. THIS ASSEMBLY MAY BE USED FOR A 5/8" CABLE ASSEMBLY ALSO.
3. REFERENCE SHEET #2 FOR INSTALLATION HEIGHT REQUIREMENT.

BILL OF MATERIAL			
ITEM	PART NO.	DESCRIPTION	QTY.
1	214-508 214-508S	ANCHOR PLATE HEAVY DUTY, GALV. ANCHOR PLATE HEAVY DUTY, S.S.	1
2	215-845 215-825	SHACKLE, 3/4" GALV. SHACKLE, 3/4" S.S.	1
3	215-425	PARABOLT, .625-11UNC X 7.00 LG.	4
4	215-155	NUT, LOCK HEX, .625-11UNC, S.S.	4

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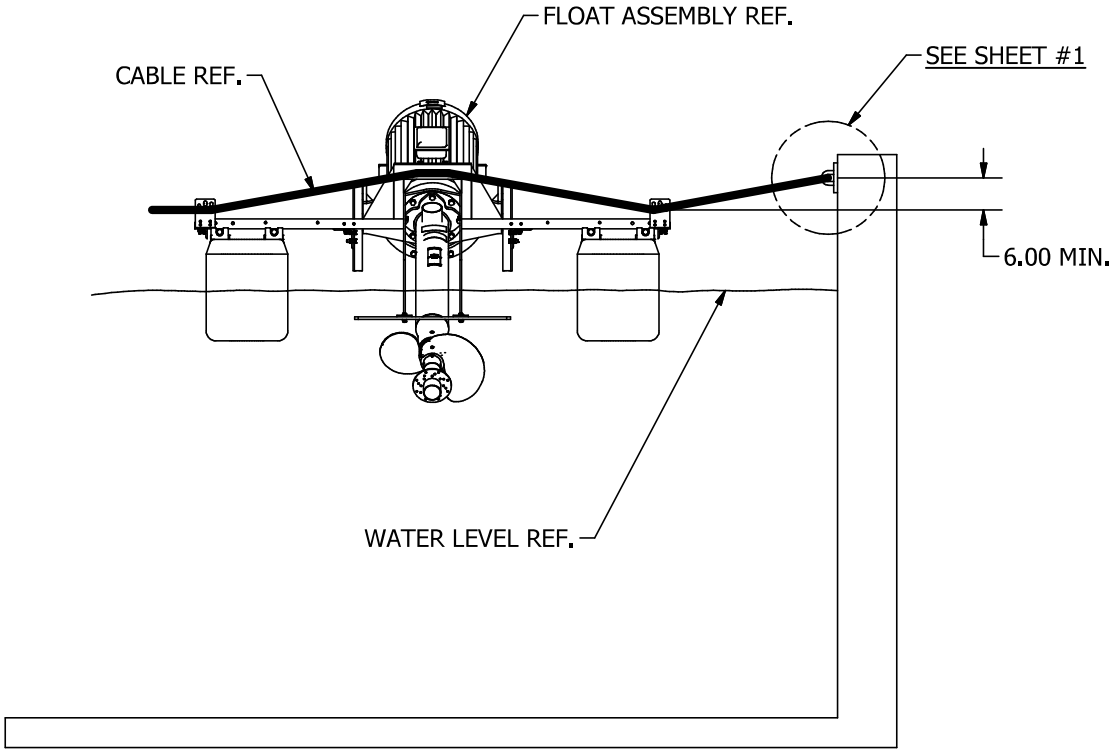
BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-
FRACTIONS ± 1/32
ANGLE ± 1°
FINISH 125
WELDMENTS
ONE PLACE ± 0.06 | 2 PLACE ± 0.03 | 3 PLACE ± 0.015
MACHINED PARTS
ONE PLACE ± 0.03 | 2 PLACE ± 0.01 | 3 PLACE ± 0.005

DRAWN: Joe Widman | DATE: 7/27/2023
REVISED | DATE

Newterra Corporation, Inc.
dba Aire-O2
4100 Peavey Rd, Chaska, MN 55318, USA.
Phone: +1-952-448-6788, Web: www.newterra.com

TITLE: WALL ANCHOR, HEAVY DUTY W/SHACKLE, 3/4" ASSEMBLY
DRAWING NO.: 360747
REV.: B
SCALE: -
SIZE: A4
SHEET 1 OF 2



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BREAK ALL SHARP EDGES AND REMOVE BURRS

TOLERANCE & FINISH
-UNLESS NOTED OTHERWISE-

FRACTIONS ± 1/32			FINISH 125
ANGLE ± 1°			
WELDMENTS			
ONE PLACE	2 PLACE	3 PLACE	
± 0.06	± 0.03	± 0.015	
MACHINED PARTS			
ONE PLACE	2 PLACE	3 PLACE	
± 0.03	± 0.01	± 0.005	

DRAWN	DATE
Joe Widman	7/27/2023
REVISED	DATE

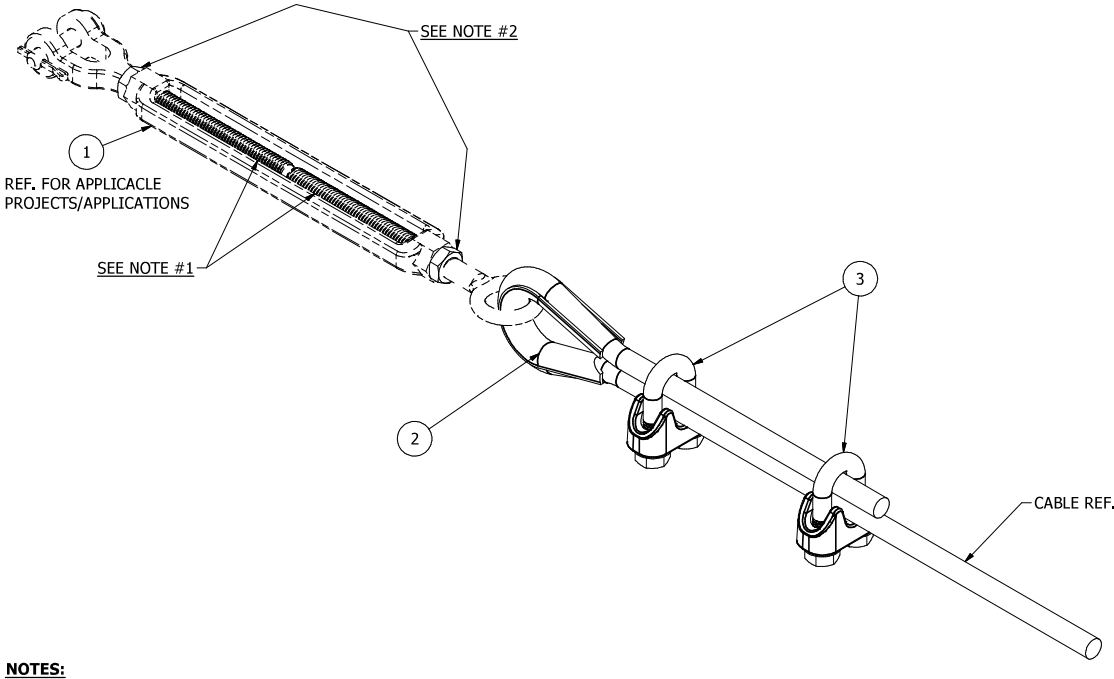
Newterra Corporation, Inc.
dba Aire-O2
4100 Peavey Rd, Chaska, MN 55318, USA.
Phone: +1-952-448-6788, Web: www.newterra.com

TITLE
WALL ANCHOR, HEAVY DUTY W/SHACKLE 3/4" ASSEMBLY

DRAWING NO.	REV.
360747	B

SCALE	SIZE	SHEET
-	A4	2 OF 2

REVISION HISTORY				
REV	ECO NO.	DESCRIPTION	BY	DATE
-	20-3168	RELEASED FOR PRODUCTION	JFW	11-19-20



NOTES:

1. APPLY ANTI-SEIZE TO THE THREADS ON THE TURNBUCKLE PRIOR TO INSTALLATION/ASSEMBLY.

2. TIGHTEN (2) JAM NUTS AT ENDS OF TURNBUCKLE AFTER IT HAS BEEN TIGHTENED TO FINAL DESIRED POSITION.

BILL OF MATERIAL			
ITEM	PART NO.	DESCRIPTION	QTY.
1	-	TURNBUCKLE	1
2	-	WIRE ROPE THIMBLE	1
3	-	WIRE ROPE CLAMP	2

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•UNLESS NOTED OTHERWISE•
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ANGLE ± 1°
FINISH 125
WELDMENTS
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MACHINED PARTS
ONE PLACE ± 0.03 | 2 PLACE ± 0.01 | 3 PLACE ± 0.005

Aeration Industries International, LLC.
4100 Peavey Rd. Chaska MN 55318-1165 www.aeration.com
Phone: 1-952-448-6479 Fax: 1-952-448-7293 sales@aeration.com

TITLE: CABLE END ASSEMBLY

DRAWING NO: 360757 REV: -

DRAWN: Jon Wickum DATE: 11/19/2020

REVISED DATE

SCALE: - SIZE: B 11" X 17" SHEET 1 OF 1

Terms and Conditions

1. PURCHASE ORDER:
   Newterra ("Seller") will initiate work upon written acceptance of a complete order from a purchasing party ("Buyer"). A complete order includes a signed purchase order which includes the overall price of Agreement and scope of supply, purchase order number, payment terms, billing and shipping addresses, Tax Identification Number.

2. APPLICABILITY / SCOPE:
   All goods and services provided shall be governed by the terms and conditions set forth herein. Any modifications to these terms or to the scope of any purchase order or project hereunder, shall be mutually agreed upon and set forth in writing executed by both parties. Such writing shall clearly set forth the nature and extent of the change, and, if applicable, any adjustment in price associated with such change.

3. SCHEDULE/RENTAL TERM:
   Upon receipt of Purchase Order, unless the proposal is based on a firm schedule as noted, Seller and Buyer shall agree to a schedule and timeline for provision of scope, unless otherwise agreed to in writing.

   In the event of Buyer caused delay, Seller shall be entitled to readjustment of schedule based on the impacts due to the delay. Seller shall advise Buyer, in writing, of the revised schedule. Seller shall be entitled to compensation from all costs associated with Buyer caused delay.

   The Rental Term will begin on the date the Equipment is scheduled to ship and will continue for the minimum term as detailed in the accompanying Rental Quotation. If the equipment is not returned to Seller by the end of the rental term, unless agreed by both parties under a formal contract extension, Seller may exercise the right to seize the equipment under terms of this agreement. Until the equipment is returned, Seller rental charges shall continue to accrue on a monthly basis. These non-prorated rental charges will be invoiced beginning on the anniversary date of the scheduled shipment.

4. CREDIT APPROVAL:
   All new purchase orders are subject to mandatory credit approval for first time Buyers and discretionary credit approval for repeat Buyers (credit approval form available from Seller upon request). Should Seller learn of any information that causes Seller concern about Buyer's ability to perform any of its obligations owing to Seller under a Purchase Order, Seller has the right to request Buyer to provide Seller adequate assurance of due performance on such terms as are deemed reasonable by Seller when acting in good faith, including the right to demand full or partial payment from Buyer as demanded by Seller, or the right to adequate surety. Terms without credit approval are prepaid for the full length of the Agreement.

5. EQUIPMENT OWNERSHIP AND ACCESS:
   All Equipment is and remains the property of Seller. All media is the property of Seller upon delivery and Seller accepts all responsibility for its disposal unless prior arrangements are made between Buyer and Seller. Seller will have the right to inspect the Equipment during regular business hours to observe its operation and use. The Equipment may not be removed from the original location without the prior written consent of Seller.

6. RETURN OF EQUIPMENT.
   No Equipment will be returned to Seller without prior notification to Seller and appropriate documentation. Buyer must notify Seller at least two weeks in advance of return and provide adequate documentation. Without Seller's authorization, the Equipment will not be accepted at any Seller facilities and will be returned to Buyer at Buyer's expense. In addition, Buyer is responsible for any costs, damages, or fees incurred due to unauthorized transport of Equipment and/or media.

7. PRICING/TAXES:
   The price to be paid by Buyer shall be mutually agreed upon by the parties and set forth in writing. Unless otherwise agreed to, prices quoted do not include any State, Provincial or local sales or use tax, special fees, duties or custom fees, freight and handling charges, or export crating costs that may be added to the price at invoicing. The Buyer agrees to make payments as described herein. If Seller is subjected to any such tax in connection with this sale or the delivery; the same shall be added to the purchase price and Buyer shall be responsible for paying that tax or reimbursing Seller therefore within 30 days. If Buyer is Tax Exempt, valid documentation in the form of an applicable tax-exempt certificate or direct pay permit must be provided at time of Purchase Order to be considered.

8. PAYMENT CONDITIONS:
   All orders require payment in advance unless credit has been established. Payment shall be made in the currency quoted without discount. Minimum billing amount is $100. Shipments outside of the U.S.A. and Canada shall be prepaid or drawn from an irrevocable Letter of Credit.

   Processing fees may be assessed for additional costs incurred for credit card charges, returned checks, Letters of Credit, or other bank charges. Wire transfers should be initiated with all bank charges paid from the account of the Buyer. Seller reserves the right to specify the method and/or timing of payment (including prior to shipment).

   The Seller will be entitled to a late penalty calculated at a rate of 1.5% per month (18% per annum) or if lower, at the maximum rate permitted by law, for any payment not made by the date due. If legal proceedings are instituted for collection of overdue accounts unpaid after 30 days, the Buyer will be liable for all costs adjudged by the court, including court costs and reasonable attorney fees.

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If the Buyer disputes any portion of an invoice, they shall notify Seller in writing with specific details and pay the undisputed portion as per the executed purchase order. Buyer shall reimburse all costs incurred in collection of past due amounts including but not limited to attorney's fees, court costs and collection fees incurred by Seller.

At Seller's option, Letters of Credit will be accepted by Seller when compliant with the following: The Letter of Credit must (a) Be IRREVOCABLE and CONFIRMED by a U.S.A. or Canadian bank; (b) Be in favor of Seller; (c) State payment is by site draft payable; (d) State that ALL bank charges, including those outside the country of origin, are to be applied to BUYER'S account; (e) Must state Ex-Works, point as factory unless terms of Pro Forma Invoice specify otherwise, (f) Be advised through a class A bank and show Buyer as applicant for the Letter of Credit.

9. CONSENT TO SEIZE EQUIPMENT:
By executing this agreement, the Buyer expressly consents that the Buyer and the owner of the property on which the equipment is located authorizes Seller to access the Equipment for the purpose of removing it from site in the event of breach or non-payment as defined by this agreement and will provide Seller with complete access to its equipment and cooperate with and facilitate Seller's removal efforts after Seller provides the Buyer with fourteen (14) days' notice of the payment failure. This access will include any machinery (vehicles, fork truck, crane, etc.) and personnel required to decommission the equipment, prepare it for shipment and load it on a truck, as required based on the type of Equipment involved. Removal of the Equipment by Seller does not relieve Buyer of the requirement to pay for the use of the Equipment up to the date the Equipment is removed from site. Furthermore, the Buyer will be invoiced for costs associated with Seller's recovery of the Equipment. Buyer further agrees that Seller shall be entitled to the immediate entry of injunctive relief in favor of Seller in the event that the Buyer does not fully comply with and fulfill all of its obligations in this paragraph.

10. DAMAGE DEPOSIT:
Prior to the shipment of the Equipment, the Buyer shall remit a refundable security deposit to the Seller. Upon the timely return of the Equipment to the possession of the Seller, the security deposit shall be credited to the Buyer's account within a period not exceeding two weeks, subject to deduction for any necessary repair costs incurred due to damages. The Seller reserves the right to withhold a portion or the entirety of the security deposit to cover such repair expenses, with any remainder promptly refunded to the Buyer.

11. CONSUMABLES AND RELATED PARTS:
The Buyer agrees to utilize consumables including but not limited to media, filters and other related items supplied by Seller in conjunction with the rented equipment. No component substitutions or chemicals will be utilized without prior written approval from Seller.

12. OPERATION AND MAINTENANCE:
The Buyer is responsible for all labor and material costs associated with operating and maintaining the system unless otherwise stated in a separate Maintenance Agreement included with the Rental System Agreement. The Buyer is responsible for maintaining a log of all repairs and maintenance tasks performed by any party other than a Seller employee. These logs must be submitted to Seller every month. Failure to produce accurate logs, indicating that the provided maintenance checklist is being adhered to, will result in a mandatory service visit from a seller field technician at the Buyer's expense.

The Buyer is responsible to ensure that the Equipment is operated under proper conditions as defined by the Proposal and/or the Operations and Maintenance Manual. All required maintenance must be performed on schedule. Buyer acknowledges that any improper use, maintenance, or modification of the equipment provided hereunder, or use of unqualified maintenance or service technicians will severely impair the operational effectiveness of the entire system.

The Buyer is responsible for the repair of any damage due to improper operation, improper or lack of maintenance, or any modification caused to the Equipment during Rental Period. This includes the cleaning of any vessels. Any costs associated with required repair or replacement of the equipment, including any labor and administrative fees will be the responsibility of the Buyer.

Buyer hereby agrees to indemnify, defend and hold harmless Seller from and against any and all third-party claims arising, in any manner, out of: (a) Buyer's neglect of the equipment; (b) Buyer's use of technicians not authorized by Seller to service the equipment; or (c) Buyer's improper use or modification of the equipment or failure to follow the operational and maintenance procedures provided with the equipment.

13. MEDIA
Seller is required to schedule and complete any carbon or media removal or changeout unless agreed by parties in writing. TCLP on spent media is required for disposal.

14. EQUIPMENT FAILURE:
If the equipment fails during the term of the Rental Period, the Buyer must notify Seller in writing. Buyer will work with seller to determine the cause of failure. If the failure is attributable to Seller, then Seller will suspend rental invoicing for the down time. The minimum rental period will only be counted for time that the rental system is being invoiced. If the system is down due to operation failure and the rental invoices are suspended, then this down time will not count towards the minimum rental period.

This does not include equipment stoppage or failure due to lack of maintenance by the Buyer unqualified technicians, failure due to undisclosed site conditions, or any other reason not attributable to Seller. In these cases, Buyer

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shall be responsible for any and all costs associated with Seller's investigation and repair of the equipment.

15. COMPLIANCE WITH LAWS AND REGULATIONS:
Buyer will use the Equipment in compliance with all applicable Federal, State and Municipal laws and regulations. Buyer will not use the Equipment for removal of any material such as dioxins, PCB's or radioactive materials which are not transportable under U.S. Department of Transportation specification 57. Buyer acknowledges that is has received and is familial with Seller's labeling and literature, including applicable instructions, concerning the Equipment and will forward such information to its employees who use or handle the Equipment.

16. TECHNICAL ASSUMPTIONS:
This proposal and pricing are based on Seller's interpretation of the sections of any RFP or specification that have been made available to Seller. Exceptions have been noted wherever possible. In the event of a conflict between the language in the specification or the proposal, Buyer agrees that the language in the proposal takes precedence and is the basis of the proposed pricing and scope.

17. HEALTH & SAFETY:
Any health and safety requirements, training or certification needs for entering a project site must be communicated at the time of Order. It is the Buyer's responsibility to ensure that field technicians operating on live panels, moving equipment, confined space or in any other proximity to Seller supplied equipment are informed and equipped with the appropriate PPE, training, and procedures. Seller assumes no responsibility for improper or inadequate health and safety practices by Buyer or third party.

18. APROVALS, PERMITS & INSPECTIONS:
The Buyer shall be responsible for obtaining any required permits and approvals required to operate the rental system. This includes but is not limited to air and water discharge permits, electrical and gas approval and hookup permits, local building permits. The Seller is not responsible for any such items unless otherwise specified in the proposal.

All required site inspections including, but not limited to electrical, building and fire are the responsibility of the Buyer/Owner; the Seller is not responsible for any such items.

19. CONTAMINATION:
The Buyer shall not use the equipment for treating PCBs or other hazardous material or on sites where hazardous contamination is present without prior agreement with Seller. If hazardous material is found during operation, the Buyer will contact Seller as soon as possible and will return the unit, upon completion of the contract, to Seller after the unit has been cleaned by an appropriately approved hazardous cleaning facility. This facility will guarantee the equipment to be hazardous free. Any equipment which cannot be approved hazardous free will be removed and replaced at the Buyers expense.

20. CONFIDENTIAL & PROPRIETARY INFORMATION:
Buyer acknowledges that the information and processes utilized by Seller in the design, manufacture, and supply of its products and systems are confidential and proprietary to Seller. Buyer agrees to treat as confidential and proprietary any such information or processes, including, but not limited to, design information or data, proposals, software, schematics, drawings, operational and maintenance manuals, testing procedures or other similar technical information ("Confidential Information") provided by Seller in connection with the supply or installation of products or systems hereunder, and will, at a minimum, protect any such confidential Information in a manner commensurate with the measures taken to protect Buyer's own confidential or proprietary information. Seller retains all rights, titles and interests in all such Confidential Information and Buyer shall not use or otherwise disclose to any third party any such Confidential Information except to the extent authorized by Seller in writing.

21. INTELLECTUAL PROPERTY RIGHTS:
Excepting for the benefit of air and/or water treatment as contemplated by the design of the equipment, all rights, benefits from any value received as a result of the use of intellectual property, equipment, information or advice provided by Seller remain the sole property of Seller, specifically, including, but not limited to, as it may relate to carbon or water credits, etc.

The Seller retains any and all intellectual property rights in and to the equipment, services, and/or information supplied hereunder (including, but not limited to, patents, copyrights, trademarks and trade secrets) ("Intellectual Property").

Buyer is not granted any interest, right, or license with respect to any such Intellectual Property, except to use the equipment, services and/or information for the purposes for which it is specifically provided to Buyer in accordance with the terms and conditions hereof.

Seller shall indemnify and hold Buyer harmless from and against all third-party claims of infringement or alleged infringement arising out of Buyer's use of any equipment, services, or information supplied by Seller hereunder. Provided, however, that Seller's indemnity obligation hereunder shall not apply to, and Seller shall not be responsible for, any claims to the extent arising out of Buyer's modification of Seller's equipment, services or information, or use of such equipment, services or information: (a) in combination with equipment, services or information not supplied by Seller, or (b) in the operation of any process or in any other manner inconsistent with the purpose for which Seller's equipment, services or information were intended.

Unless specified, programming for Seller's custom equipment and systems is proprietary and will remain the

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property of Seller and is not available for distribution to Buyer or others at any time.

22. INSURANCE COVERAGE PROVIDED BY BUYER:
Buyer shall, at its own expense, insure the Equipment in the name of and for the benefit of Seller against all risks, including but not limited to fire, flood, explosion, theft, vandalism or otherwise. Such insurance shall cover the total replacement value of the Equipment listed on the Rental Quote and meet the minimum required limits listed below. Buyer shall provide Seller with a certificate of such insurance coverage naming Seller as Additional Insured and Loss Payee with provision for notification to Seller of any change in coverage and/or cancellation. Buyer shall maintain such coverage during the term of this rental and for any additional period in which such Equipment is in its possession including the period of shipment to Seller. Minimum required insurance limits:

Commercial General Liability- $1,000,000 Each Occurrence,

Automobile Liability- $1,000,000 Each Occurrence,

Umbrella Liability/Excess- $4,000,000 Each Occurrence,

Workers Compensation- $1,000,000 Each Accident,

Cyber Liability- $ 1,000,000 Aggregate Limit

Buyer policies are primary and non-contributory and shall include waivers of subrogation in favor of Seller on Commercial General Liability, Auto, and Workers Compensation policies. Umbrella Policy follows the form of underlying policies in favor of Seller.

23. BUYER INDEMNIFICATION:
To the fullest extent permitted by law, Buyer hereby agrees to protect, defend, indemnify and hold harmless Seller and its affiliates, managers, shareholders, directors, officers and employees from and against all losses and damages incurred and all liability to others and all claims, causes of action and suits, for personal injury, including death or property damage arising out of the acts or omissions of Buyer or Buyer Parties. Buyer agrees to pay all costs and expenses paid or incurred by Seller in enforcing its rights hereunder, including without limitation, attorney's fees, and court costs.

24. SELLER INDEMNIFICATION:
To the fullest extent permitted by law, Seller hereby agrees to protect, defend, indemnify and hold harmless Buyer and its affiliates, managers, shareholders, directors, officers and employees from and against all losses and damages incurred and all liability to others and all claims, causes of action and suits, for personal injury, including death or property damage to the extent such is caused by the negligent acts or omissions of Seller or Seller Parties. Seller agrees to pay all costs and expenses paid or incurred by Buyer in enforcing its rights hereunder, including without limitation, attorney's fees, and court costs.

25. NON-WAIVER:
The parties' failure to demand strict performance or to otherwise enforce any rights hereunder shall not constitute a waiver of any rights hereunder. No claim arising out of a breach hereof may be discharged in whole or in part by a waiver of the claim unless supported by consideration and set forth in a writing signed by the waiving party. Any such waiver shall apply to the specifically identified claim only and shall in no way constitute a waiver or discharge of any other prior or subsequent claim.

26. BREACH/DEFAULT:
In addition to any failure to comply with any other term or condition as set forth herein, the occurrence of any of the following events shall constitute a breach/default on the part of Buyer: (a) If Buyer shall become insolvent or make a general assignment for the benefit of creditors; (b) If a petition for Bankruptcy is filed by or against Buyer; (c) If, at any time Buyer fails to fulfill its obligations under the terms and conditions hereof, or acts in such a manner as to endanger performance of such obligations; (d) If Seller shall reasonably believe that Buyer will not timely fulfill its obligations, including payment or otherwise perform hereunder, and Buyer is unable to provide reasonable assurances that such timely performance will occur.

Upon breach/default by Buyer, Seller may terminate the contract or agreement by giving notice to the Buyer. Such termination may be effective immediately at the sole choice and discretion of Seller. In the event of a breach and contract termination, Buyer is still responsible for all costs incurred by Seller.

27. SUSPENSION:
If any project or order, for which Seller is to supply goods and/or services hereunder, is requested to be suspended by Buyer for any reason other than a breach by Seller, Seller shall cooperate with Buyer in rescheduling any planned or ongoing work, and in otherwise complying with the suspension instructions. However, Buyer must provide reasonable written notice to Seller for any requested suspension. Seller shall reserve the right to adjust the scheduling, pricing, and/or billing due to any impact of the approved suspension. Provided, however, that in the event of any such suspension which continues for a period of 90 days, Seller shall be entitled to terminate that order, without any further liability or obligation of Seller thereunder.

Seller, may by written notice to Buyer, suspend this order due to any of the following: (i) Buyer fails to perform in accordance with the delivery schedule; (ii) Buyer fails to properly pay Seller for any properly submitted invoices; (iii) Buyer has breached or otherwise failed to comply with any provision of this order that is capable of being cured and Buyer does not cure the same within a period of five (5) calendar days after receipt of written notice from Seller.

28. TERMINATION FOR CAUSE:
Should Buyer be in breach under this Rental Agreement, Seller shall have the right, as well as all other rights per the applicable law to request to terminate all or part of any unperformed portion of this Purchase Order by reasonable written notice to Buyer. Upon receipt of such notice, Seller shall immediately stop the rental of the Equipment on the portion of the order terminated or canceled. In the event of

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such termination, Buyer shall be liable for the value of the remaining Rental Period that cannot be cancelled, prior to the time that notice of termination is given.

29. CANCELLATION OF THIS AGREEMENT:
This Agreement is structured as a Rental Agreement only. It is not subject to cancellation except by mutual consent and on terms that will indemnify Seller against loss. If any project or order, for which Seller is to supply goods and/or services hereunder, is terminated before the minimum rental period is met, or before shipment of the project, Seller shall be entitled to charge 60% of the remaining payments to meet the minimum rental period listed in this agreement. Additional costs incurred as a direct result of termination may include, but are not limited to, freight and storage charges, costs of labor, transportation, travel and living expenses for support.

30. FORCE MAJEURE:
Neither party shall be liable for any cost increase, failure or delay in its performance resulting from any cause beyond its reasonable control including, but not limited to, acts of God; acts or omissions of civil or military authority; fires; floods; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; epidemic; pandemic; changes in laws, delays in transportation; sabotage; or fuel, power, material or labor shortages.

31. LIMITATION OF LIAIBLITY:
Under no circumstances whatsoever will Seller be responsible for liquidated, indirect, special, incidental or consequential damages including, but not limited to, lost business, overhead, loss of use of property, delay, damages, lost profits or third party claims, whether foreseeable or not, even if Seller has been advised of the possibility of such damages in connection with , use or performance of the equipment or the provision of maintenance services by Seller regardless of whether such claims are alleged to have arisen out of breach of warranty, breach of contract, stricter absolute liability in tort, or other act, error or omission or any other cause whatsoever, or any combination of the foregoing.

Under no circumstances whatsoever will Seller be responsible for direct damages in excess of 50% of the contract value.

32. ASSIGNMENT:
The rights and responsibilities of the Buyer as set forth herein are personal to the Buyer and may not be assigned or delegated without the prior written consent of Seller.

33. APPLICABLE LAW / DISPUTES:
Buyer acknowledges that the “Terms” from the Contract are deemed to be made in Pennsylvania for transactions in the U.S.A. and in Ontario for transactions in Canada, and that Buyer, in relation to this project, is deemed to be transacting business in Pennsylvania (U.S.A. transactions) and Ontario (Canadian transactions). It is the expectation of the parties that any disputes arising hereunder, whether in contract, tort or otherwise, will be amicably resolved by mutual agreement of the parties.

Any dispute, involving the supply of goods or services within the U.S.A. or Canada, which cannot be amicably resolved by the parties, shall be submitted to binding arbitration in accordance with the applicable rules and regulations of the Canadian Arbitration Association for Canadian contracts or the American Arbitration Association for U.S.A. and all other contracts. The substantive law of Pennsylvania for U.S.A. contracts or Ontario for Canadian contracts shall apply to any such arbitration, which shall be conducted in Pittsburgh, Pennsylvania (U.S.A. contracts) or Ottawa, Ontario (Canadian contracts).

Nothing herein shall be construed as preventing Seller from enforcing any claim or right to a mechanic’s lien or any claim or right against a bond regardless of where such a claim must be filed or enforced.

34. ENTIRE AGREEMENT/MODIFICATION:
The within agreement is the entire agreement of the parties relative to this transaction and there are no other conditions applicable hereto not set forth herein. This agreement shall not be modified except in a writing signed by both Buyer and Seller.

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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:

_____ Apr 3, 2024

City Chief Procurement Officer, Travis Dutton-Leyda **Date**

City Approval by:

John Dupuis (Apr 4, 2024 10:44 MDT) Apr 4, 2024

Department Director, John Dupuis **Date**

Marcos Martinez Apr 3, 2024

Marcos Martinez (Apr 3, 2024 17:03 MDT)

City Attorney, Erin McSherry **Date**

John Blair
John Blair (Apr 3, 2024 18:09 MDT)

Apr 3, 2024

City Manager, John Blair **Date**

Emily K. Oster

Apr 4, 2024

Finance Director, Emily Oster **Date**

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

Digitally signed by Cheryl T. Seager
Date: 2024.03.04 16:05:14 -06'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

This proposal provides an offer to provide staffing services. ITSQuest, Inc. offers a variety of employment and human resource services. A rate quote on additional services will be provided quickly.

Offer to:

John Dupuis
City of Santa Fe Public Utilities Department
1142 Siler Road
Santa Fe, NM 87507
Phone: 505-955-4209
Email: jedupuis@santafenm.gov"

Position Title	Location	Dates of Service FY2024	Hourly Rate	Weeks	Weekly Units	Unit totals	Rate **	Subtotals	GRT Rate	GRT	Total Budget
Project Manager	SF	4/1/2024 - 6/30/2024	$63.10	13	40	520	$94.02	$48,889.88	8.1875%	$ 4,002.86	$52,892.74

TOTAL PO AMOUNT $52,892.74

* Dates are a maximum number of days to be worked. This is not a guarantee of days to be worked.

** To avoid overtime reiumbursements, temporary employees may not work over 40 hours per week.

Price Agreement Number: 40-00000-23-00027

Title: Temporary Administrative and Professional Staffing (GS-02F-006CA)

Term: October 6, 2023 - December 8, 2024

Date: March 19, 2024

Lola Priest

Signature

This offer is open for a period of thirty days. Acceptance by the offeree must be bound by issuing a purchase order.

This proposal provides an offer to provide staffing services. ITSQuest, Inc. offers a variety of employment and human resource services. A rate quote on additional services will be provided quickly.

Offer to:

John Dupuis
City of Santa Fe Public Utilities Department
1142 Siler Road
Santa Fe, NM 87507
Phone: 505-955-4209
Email: jedupuis@santafenm.gov"

Position Title	Location	Dates of Service FY2025	Hourly Rate	Weeks	Weekly Units	Unit totals	Max Bill Rate **	Subtotals	GRT Rate	GRT	Total Budget
Project Manager	SF	7/1/2024 - 6/30/2025	$63.10	52	40	2080	$94.02	$195,559.52	8.1875%	$ 16,011.44	$211,570.96

TOTAL PO AMOUNT $211,570.96

* Dates are a maximum number of days to be worked. This is not a guarantee of days to be worked.

** To avoid overtime reiumbursements, temporary employees may not work over 40 hours per week.

Price Agreement Number: 40-00000-23-00027

Title: Temporary Administrative and Professional Staffing (GS-02F-006CA)

Term: October 6, 2023 - December 8, 2024

Date: March 19, 2024

Lola Priest

Signature

This offer is open for a period of thirty days. Acceptance by the offeree must be bound by issuing a purchase order.

MOLZENCORBIN

March 20, 2024

Mr. Michael Dozier
Wastewater Division Manager
City of Santa Fe
P.O. Box 909
Santa Fe, New Mexico 87504-0909

RE: Emergency Purchase Order to Address EPA Administrative Order CWA-06-2024-1745 Citing Violations at the City of Santa Fe Paseo Real WWTP.

Dear Mr. Dozier:

The City of Santa Fe has requested that Molzen Corbin provide this Proposal for Engineering Services to assist in compliance with Administrative Order CWA-06-2024-1745. The Administrative Order was issued to the City of Santa Fe by the U.S. Environmental Protection Agency (USEPA) on March 4, 2024.

Molzen Corbin is one of the most experienced wastewater engineering firms in New Mexico. We have extensive experience designing, upgrading and retrofitting wastewater treatment facilities for communities throughout New Mexico. Our engineering staff regularly designs process modifications to improve performance at wastewater treatment facilities throughout the state.

We have assisted many communities when they have been issued Administrative Orders by the USEPA. We are experienced at working through the Administrative Order process to help communities comply with both the order and the conditions of their NPDES Permit. We have developed a template for responses to Administrative Orders and can assist them with their response.

Our process engineers work with the community's engineers and operators to evaluate data and assess operating conditions to solve water quality discharge problems. We may recommend changes to operating procedures, upgrades to existing facilities, replacement of aging equipment or installation of new infrastructure to improve effluent quality.

The City has expressed that Molzen Corbin develop a data-driven decision making approach to solving the problems at the Paseo Real Wastewater Treatment Facility. The City would like Molzen Corbin to explore ways that the Facility can be updated and streamlined so processes are equipped with that latest technology that is available.

Molzen Corbin understands that time is critical. The City of Santa Fe must submit a response to USEPA by April 3, 2024 as directed in Compliance Order Section C of the Compliance Order.

WILLINGNESS AND CAPABILITY

Molzen Corbin currently has staff available with the necessary expertise to assist the City of Santa Fe in complying with the Administrative Order. If the City needs services not offered by Molzen Corbin, this proposal includes fee for Additional Services that would allow Molzen Corbin to hire subconsultants. Additional Services may be used to explore multiple approaches to solving problems.

SCOPE OF SERVICES

This project may include but is not limited to the following:

- Research
- Process Engineering
- Design
- Construction Administration
- Telemetry and Controls

COMPENSATION
We propose to perform the Work described above on a Time and Materials basis based on our current Standard Billing Rates enclosed herein.

Basic Services – not to exceed $80,000 would include but not be limited to:

- Research
- Design
- Construction Administration

Additional Services – not to exceed $100,000 would include but not be limited to:

- Process Engineering
- Telemetry and Controls
- Other specialized services to be determined.

If you have any questions or require additional information, please contact Mr. Steve Morrow, P.E. at 505.242.5700.

Sincerely,

MOLZEN CORBIN

Kevin W. Eades, P.E.
Chief Executive Officer

Enclosure

MOLZEN-CORBIN & ASSOCIATES
STANDARD BILLING RATES
AS OF FEBRUARY 1, 2024

DEPARTMENT	BILLING CATEGORIES	2023 RATES
Architectural	Senior Principal Architect	273
	Principal Architect	252
	Senior Architect	210
	Project Architect	168
	Registered Architect	158
	Intern Architect 2	121
	Intern Architect 1	95
	Senior Architectural Designer	142
	Architectural Designer I	137
	Planner	111
	Landscape/Irrigation Designer	111
Civil Engineering	Senior Principal Engineer	273
	Principal Engineer	252
	Senior Engineer	231
	Project Engineer	189
	Professional Engineer	163
	Engineering Intern II	142
	Engineering Intern I	131
	Senior Civil Design Specialist	173
	Engineering Design Specialist	147
	Senior Engineering Design Tech	153
	Engineering Design Tech	116
	Associate Engineering Design Tech	95
Electrical Engineering	Senior Principal Engineer	273
	Principal Engineer	252
	Senior Engineer	210
	Project Engineer	184
	Professional Engineer	163
	Engineering Intern II	142
	Engineering Intern I	126
	Engineering Design Specialist	147
	Engineering Design Tech	116
	Associate Engineering Design Tech	95
Mechanical	Senior Mechanical Engineer	195

MOLZEN-CORBIN & ASSOCIATES
STANDARD BILLING RATES
AS OF FEBRUARY 1, 2024

Water Resource Engineering	Senior Principal Engineer	273
	Principal Engineer	252
	Senior Engineer	231
	Project Engineer	184
	Professional Engineer	163
	Engineering Intern II	142
	Engineering Intern I	131
	Sr. Engineering Design Specialist	168
	Engineering Design Specialist	142
	Engineering Design Tech	116
	O & M Specialist	116
	Associate Engineering Design Tech	95
CADD / Survey	CADD Operator II	84
	CADD Operator I	74
	Survey Technician	111
	Two Person Survey Crew	222
	Two Person GPS Survey Crew	247
	Licensed Surveyor	231
Construction Observation	Senior Observer/Manager	111
	Senior Observer	105
	Observer	100
Administration	Administrative Aide II	79
	Administrative Aide I	58
	Administrative Support	105
	Grants/Technical Administrator	116
	Computer Technician	126
	Senior Technical Writer / Editor	100

Miscellaneous Expenses

Copies	Per Copy	$0.11
Color Copies	Per 8 1/2 x 11 Copy	$1.00
Color Copies	Per 11 x 17 Copy	$2.00
Prints/Plots(24x36)	Per Sheet	$3.00
Mileage	Per Mile (per IRS)	
Sub-Consultants	Cost x 1.1	

Carollo Engineers, Inc.
On Call Engineering Services for
Water and Wastewater Processes and Treatment

SCOPE OF WORK
TASK ORDER 24-WW-01
Establishing Operational Excellence
March 19, 2024

The City of Santa Fe requested assistance to establish knowledge management tools that can be used to document the intent and nuances of each unit process. The resulting documentation can be used for training for new hires and refresher training for existing staff.

An evaluation of current conditions can help define available data, design parameters and current work routines. A gap analysis is typically used to establish the current conditions. From that analysis a more robust approach to formalize a variety of work practices and facility documentation that, if addressed, could provide more consistent facility operation. Consistent facility operation will result in reduced operating costs, less variable facility outputs, and improved O&M awareness.

Initially, three documents are desired. Two are Area Procedures and Expectations (APEs) to capture unit process information: Non-Potable Water Distribution (NPWD) and the Oxidation Ditch Biological Nutrient Removal (BNR) processes. The third is the initial Annual Operations Plan.

This Scope of Services includes working in concert with Hazen and Sawyer and the Wastewater Division Plant Superintendent, with concurrence with the Wastewater Division Director. For success, it is expected that the Plant Superintendent will be heavily involved in the development of the initiatives, with Carollo's and Hazen's Operations Specialists providing guidance and examples to complete and then launch the initiatives developed in this Scope of Services. It is probable that a variety of staff will be engaged, as many of these initiatives involve the existing database, upgraded presentation of concepts and instructions, and computer-based support.

The goal of this Scope of Services is to assist the City of Santa Fe and the Wastewater Division Plant Superintendent in developing means and methods to improve the operation and maintenance of wastewater treatment processes.

The work and resulting deliverables will be split between Carollo Engineers and (under separate authorization) Hazen. Additional authorizations may be required to complete the breadth of the envisioned Establishing Operational Excellence initiatives.

Services will include some or all of the specific tasks listed below, up to the budget upper limit for this Task Order.

PHASE 1 – Site Visit and Gap Analysis

Site Visit

1. This allows Operations Specialist(s) to learn the facility, but more importantly, meet the staff to establish our working relationships.

Conduct a gap analysis to understand the current state of facility operations.

1. The analysis will identify strengths, opportunities and concerns.
2. The results will be documented in a report.

Evaluate current databases for completeness.

1. Compare existing data and presentation to best-industry practices.
2. Includes daily process results, data tracking and trending used for process control and optimization.

Evaluate and upgrade existing unit process performance measurement reports.

1. Refine or establish key performance indicators to match typical industry practices.
2. Refine the presentation of performance data in monthly and annual formats to match KPIs and annual operating plan information.

Standardize unit process Standard Operating Procedures for the NPWD and BNR processes.

1. Evaluate existing SOPs against typical industry practices.
2. Define SOPs that may be missing.
3. Provide template to standardize SOPs based on EPA guidance.
4. Assist staff is the development of pilot SOPs based on the Oxidation Ditch BNR process.

Phase 2 – Develop Pilot APEs

Develop Area Procedures and Expectations (APEs) for the NPWD and BNR processes.

1. APEs will be developed in PowerPoint.
2. The presentation will define the treatment objectives, process control responses, control points, sampling locations, data recording, crucial SOPs, critical preventative maintenance activities, and expected duties and expectations of maintenance and operator personnel working within the process. These serve as a training tool for new employees and refresher information for others.
3. These APEs will be the model for all other identified process areas.

Draft a Facility Operations and Maintenance Plan (Plan).

1. The Plan establishes how O&M staff operate and maintain each unit process at the facility.
2. The Plan describes sampling means and methods used to demonstrate permit compliance.

Draft an Annual Operating Plan (AOP).

1. The AOP identifies factors, such as projected wastewater flows and loads, as well as activities, such as construction or extraordinary maintenance, which will impact plant operations in the coming year.
2. Based on these factors, specific operating strategies are identified for treatment unit processes for the year.

3. The AOP projects upcoming maintenance or construction activities for advanced planning to support budget allocations.
4. The plan identifies facility or capacity deficiencies to help inform capital improvement upgrades.

PRELIMINARY PROJECT APPROACH

The project objectives are provided below.

ID	Description	Work Required
Phase 1		
1.1	Site Visit and Gap Analysis	• Review current conditions • Conduct interview(s) • Confirm findings • Provide findings in a report
1.2	Process data reporting evaluation	• Evaluate existing means and methods • Provide report with suggested improvements
1.4	Data tracking and reporting	• Evaluate existing • Provide report with suggested improvements
1.5	Standard Operating Procedures	• Evaluate existing • Provide template for to standardize current and/or develop future SOPs
Phase 2		
2.1	NPWD Area Procedures and Expectations	• Develop PowerPoint • Provide NPWD staff training
2.2	BNR Area Procedures and Expectations	• Develop PowerPoint • Provide NPWD staff training
2.3	Facility Operations and Maintenance Plan	• Develop initial plan
2.4	Annual Operations Plan	• Develop initial plan

$80,000.00 of the contractual upper limit is allocated to work to be executed under this Task Order, inclusive of labor and expenses, but exclusive of NMGRT. The work will be invoiced on a time and materials basis. Project management time for staffing and budget management and reporting for this task order will be included when work is active on this task order. A progress report will accompany monthly invoices, providing a summary of work conducted under Task Order 24-WW-01 for the subject invoicing period. The invoice will indicate the amount of the $80,000.00 upper limit for this task order that has been incurred versus the amount remaining.

Approved:

Michael Dozier
Wastewater Division Manager
City of Santa Fe

Date

John Rehring
Vice President
Carollo Engineers, Inc.

Date

Becky Luna
Senior Vice President
Carollo Engineers, Inc.

Date

REVISED a WORK ORDER PRICING

A.A.C. Construction, LLC

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: 3/19/2024**
PROJECT MANAGER: Andrew Sisneros, (505) 930-0481

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

N.M. License # 93237

Great Western Electrical INC.

3310 GIRARD N.E.
ALBUQ., N.M. 87107
(505) 881-6525
Fax (505) 881-6396

March 19, 2024

RE: Electrical Proposal
Santa Fe Waste Water SCATA Fiber Installation
Attention: Andrew Hardinge
Scope:

- Provide 18,000 feet of 1" innerduct.
- Provide 18,000 feet of TLC 24 fiber indoor, outdoor, and plenum rated.
- Provide and install 10 stainless NEMA4 boxes to end fiber runs in each building.
- Provide and install stainless NEMA4 boxes in manholes where fiber and innerduct splice.
- Pull innerduct and fiber per COSF WWTF proposed innerduct conduit system drawing.
- Provide and install a 2" EMT conduit from the SCATA room in the administration building to the underground manhole conduit system.
- Core holes into manholes to extend raceways to Las Campanas golf course pump house, dissolved air flotation control building, the holding tank by the lime bed, the maintenance office, and the primary clarifiers.

Labor	$70,363.35
Material retail	$63,101.26
Material 10% discount	$56,791.14
Equipment	$13,073.50
Permit	$800.00
Sub Total	$141,027.99
NMGRT @ 8.1875%	$11,546.67
Bond	$3,115.42
Total	**$155,690.08**

Exclusions

- Damaged to unmarked underground utilities.
- Testing and terminating the fiber.
- Overtime or after-hours work.
- Trench, conduit, fiber, and innerduct to secondary clarifiers and offices.

Regards,
Danny Burson
Project Manager

City of Santa Fe - Waste Water SCATA

MATERIAL	QUANTITY	RETAIL COST	UNIT	EXTENDED COST
STAINLESS JUNCTION BOXES	20	$699.87	E	$13,997.40
FIBER CABLE	18042	$105.54	C	$19,041.53
1" INTERDUCT	18000	$104.15	C	$18,747.00
1" INTERDUCT COUPLING	100	$0.61	E	$61.00
ASPHALT	17	$145.81	E	$2,478.77
2" RIGID	100	$1,797.92	C	$1,797.92
2" RIGID 90	12	$73.94	E	$887.28
2" RIGID COUPLING	12	$20.47	E	$245.64
2" RIGID NIPPLES	12	$11.10	E	$133.20
2" LOCKNUTS	20	$150.89	C	$30.18
2" PLASTIC BUSHINGS	30	$89.65	C	$26.90
2" EMT	300	$690.63	C	$2,071.89
2" EMT 90	8	$28.58	E	$228.16
2" EMT COUPLING	30	$643.06	C	$192.92
2" EMT CONNECTORS	8	$579.51	C	$46.36
2" MINERALLAC STRAPS	20	$182.47	C	$36.49
FULL STRUT	100	$953.53	C	$953.53
2" CONDUIT STRAPS	50	$349.53	C	$174.77
ALL THREAD	20	$370.11	C	$74.02
2" PVC	500	$363.38	C	$1,816.90
2" PVC COUPLINGS	20	$67.70	C	$13.54
2" PVC FEMALE ADAPTERS	20	$98.45	C	$19.69
TAPE	500	$52.37	M	$26.19
		$0.00		$0.00
Total Retail Cost				**$63,101.26**
10% DISCOUNT				**$6,310.13**
TOTAL				**$56,791.14**

N.M. License # 93237

3310 GIRARD N.E.
ALBUQ., N.M. 87107
(505) 881-6525
Fax (505) 881-6396

City of Santa Fe – Waste Water SCATA
#17 equipment rental or utilization breakdown

2018 caterpillar 259D	35@$29.10	$1,018.50
2018 caterpillar 301.7D	100@$66.80	$6,680.00
2006 caterpillar 416C	105@$48.10	$5,050.50
2017 Bomag BT 65 Tamper	55@$5.90	$324.50
Total		$13,073.50

Hazen and Sawyer
100 Sun Ave. NE, Suite 206
Albuquerque, NM 87109

March 18, 2024

John Dupuis
Public Utilities Director
City of Santa Fe Public Utilities Department
801 W. San Mateo Rd
Santa Fe, NM 87505

Re: Paseo Real Water Reclamation Facility (PRWRF)
Engineering, Operational Support, and Related Services in
Response to EPA Administrative Order CWA-06-2024-1745

Dear Mr. Dupuis:

We appreciated the opportunity to meet with the City of Santa Fe (City) on Wednesday, March 13, 2024 to discuss the referenced Administrative Order (AO) the City received from the U.S. Environmental Protection Agency (EPA) Region 6. As we discussed, the City would like to implement an overall plan that 1) responds to and resolves the AO, and 2) prepares the City for long-term, future success in operating and managing the Paseo Real Water Reclamation Facility (PRWRF) and similarly at a future facility being considered and visioned by the City as an eventual replacement for the PRWRF. The City's 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 (9) steps:

1. Provide sampling and regulatory support to ensure compliance with existing permits.

2. Support the City's external communications with the New Mexico Environment Department (NMED).

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 a "digital twin" model of PRWRF to simulate and help optimize treatment plant operations.

8. Develop tools for remote simulation and testing of proposed changes to plant operations.

9. Provide engineering support for short-term treatment plant improvement projects.

The following narrative further defines the specific activities and services Hazen and Sawyer ("Hazen") proposes to provide. This work will be performed under a new engineering services agreement between the City and Hazen to be issued in response to EPA Administrative Order CWA-06-2024-1745.

Scope of Work

1. Sampling and Regulatory Support

Hazen will coordinate one soil sampling event and four quarterly groundwater sampling events at the PRWRF, with the samples being analyzed for poly- and perfluoroalkyl substances (PFAS). Both the soil and groundwater samples will be analyzed using EPA Method 1633. The sampling and reporting will be conducted by a third party in the place of City staff, with minor support from City staff. We have assumed that a total of 10 soil samples will be collected during one soil sampling event (including duplicate samples), and that each sample will be collected from a depth of 2 to 3 feet below ground surface using a hand auger. Ten groundwater samples will be analyzed during each groundwater sampling event (7 PRWRF monitor wells and 3 quality assurance samples). The groundwater sampling for PFAS will begin before Hazen begins supporting the groundwater sampling that is required by the facility's discharge permits (discussed below).

Hazen will coordinate the quarterly groundwater sampling and analysis that is required under discharge permits DP-289 (Wastewater Reclamation Facility) and DP-135 (Sludge Disposal Facility) issued by the NMED Ground Water Quality Bureau (GWQB) for six (6) quarters, starting with the second quarter sampling event in 2024. Hazen will also coordinate the required reporting under these permits. The sampling and reporting will be conducted by a third party in the place of City staff, with minor support from City staff (e.g., for purge water disposal). The City will provide additional information (e.g., monthly totalized average daily and peak daily influent volumes, monthly volumes discharged to each reclaimed domestic wastewater recipient, discharge monitoring reports) for inclusion in the quarterly discharge permit reports prepared for NMED. This task will support the City in achieving compliance with the requirements of these permits.

2. Communications Support

Along with City leadership and staff, Hazen staff (Amy Ewing) will participate in weekly phone calls that will be scheduled with NMED to discuss the current and planned activities and progress made in support of responding to and resolving the AO.

3. **Build a comprehensive base of knowledge management tools / decision trees for PRWRF operations**

Daily activities by PRWRF operations, maintenance, and management staff will support routine and consistent compliance with permit limits established by the City's National Pollutant Discharge Elimination System (NPDES) Permit NM 0022292 once staff have a clear understanding of:

- The purpose of each unit process
- Key Performance Indicators (KPIs) for measuring its performance
- Its relationship to upstream and downstream unit processes
- Information needed to monitor the process, and
- Expectations for each level of staff on how to achieve performance goals set for the process

Hazen proposes to develop these understandings by developing a series of documents called Area Procedures and Expectations (APEs) for each of the seven (7) liquid stream unit processes and four (4) solids handling processes at PRWRF. Each APE, developed as a PowerPoint presentation, will provide a clear guide for each level of operations, maintenance, and management staff, and will provide specific guidance for how and when to adjust the process, by how much, and by whom. Hazen's production of APEs will leverage existing Operation and Maintenance (O&M) Manual and Standard Operating Procedure (SOP) documentation the City may already have in place for PRWRF.

APE production will also document gaps between available information routinely collected (e.g., lab tests and SCADA data) versus what is needed to achieve reliable performance, how such information is distributed, and what improvements to information management are needed so that key items are communicated to staff who need it the most and at a frequency that supports their needs. APE production will also identify information and records currently being collected that do not serve the purpose of optimizing a treatment process. Lastly, APEs will capture information provided during the development of Items 4 and 5 described below.

Once the APEs have been prepared, Hazen will provide on-site staff training for each. This will include administering knowledge assessment quizzes to confirm staff are absorbing the critical information needed to successfully operate and maintain each unit process.

The collection of APEs will form the foundation for PRWRF knowledge management / transfer to which existing staff can refer as they work to optimize facility operations and to train future staff. As "living documents", APEs can be periodically updated by the City to reflect new facilities and capital improvements implemented at PRWRF.

The next element of this PRWRF knowledge management program summarizes the information contained in the 11 APEs (7 for liquid processes / 4 for solids handling) and provides an overview for how each process is supposed to work. This document called **Unit Process Operating Strategies** provides a useful reference to all levels of PRWRF staff and will serve as a tool for newcomers so they can quickly become familiar with "the right way" to operate plant facilities.

The final element of the knowledge management program currently envisioned will be preparation of a PRWRF **Operational Plan**. This document will provide information on the staff hierarchy, command and

communications structure, state and federal regulatory permits, plant safety programs, interrelationships with other City work groups (e.g., purchasing and materials management), and key summaries about PRWRF unit processes extracted from the **Unit Process Operating Strategies** document. Whereas the latter focuses on the information needed to optimize plant treatment operations, the **Operational Plan** focuses on the PRWRF enterprise as a whole and the communications within each internal and external City work group needed to achieve the best performance possible from PRWRF.

4. Improve PRWRF laboratory practices, data management, workflows, and communications

Hazen will provide the City with external sampling and reporting support for samples that are collected by PRWRF staff and analyzed by the in-house laboratory to demonstrate compliance with applicable state and federal discharge permits and to support operational control of PRWRF unit processes. We will work with City staff to ensure that all lab process documentation is current and complete and will assist in clearly defining appropriate workflows for PRWRF staff involved in sample collection, testing, and reporting of results. This task will include performing a review of lab operations, external collection and testing of laboratory samples for a period of up to 4 weeks, and assistance with the transition back to in-house sampling and analysis after PRWRF staff roles and responsibilities have been clearly defined for future lab activity. Item 4 includes an initial workshop with Hazen and City staff to further define the City's specific goals and objectives for the work to be completed.

5. Provide an inventory of all PRWRF instrumentation

Hazen will develop an updated inventory of all instrumentation installed at PRWRF including calibration procedures and how this information is managed, stored, accessed, and communicated (e.g., paper logbooks, SCADA, Operator10™ software, or an alternate operational data storage platform/historian). This inventory will identify existing instruments that do not perform their intended function and/or could be re-deployed to provide the information needed by Operations staff. This inventory will also note opportunities to add instruments that will support real-time monitoring of treatment processes, as needed to accomplish Items 6 through 8 below. If practical, Hazen will use the City's current asset database format and structure to prepare this inventory of PRWRF instrumentation, which might then be used as an input to the City's asset management program.

6. Develop a model for treatment operations

Hazen will use the available information from lab data and SCADA data including any improvements to these sources realized through the outcomes of the work on Items 3 through 5 above, and will develop an operational model for PRWRF performance. This model will be developed using open-source software (e.g., SUMO™, BioWIN™, or similar product) and calibrated using the available data set. This model will be tested using the updated procedures for controlling and adjusting plant operations developed under our work for Item 3. This item includes an initial workshop with Hazen and City staff to further define the City's specific goals and objectives for the work to be completed.

7. **Develop a "digital twin" model of plant operations to simulate and help optimize treatment plant operations**

The modeling work for Item 6 will next be used to develop a more advanced model that will serve as a "digital twin" the City can use for a variety of purposes including:

- A testbed for proposed changes to existing modes of operation for a particular treatment process
- Observing responses to upset / unexpected conditions for influent wastewater
- Assessing the impact that mechanical breakdown of treatment plant equipment may have on plant performance

As described, the "digital twin" should allow the City to evaluate the plant's response to a suite of unexpected stressors and determine what facility improvements or changes to normal operating procedures will foster a more resilient operation. Item 7 includes an initial workshop with Hazen and City staff to further define the City's specific goals and objectives for the work to be completed.

8. **Develop tools for remote simulation and testing of proposed changes to plant**

The City has expressed interest in having Hazen partner with a nationally recognized firm to perform remote modeling, testing, and optimization of PRWRF operations, such as are provided by the company AM-Team or a similar entity. This item will build upon the work completed by Hazen for Items 3 through 7. The specific scope for Item 8 will be further refined once the outcomes for Items 3 through 7 have been established.

9. **Provide engineering support for short-term plant improvement projects at PRWRF**

The City has engaged the services of AAC Construction to perform select construction projects at PRWRF that are characterized as limited scope, remove-and-replace in-kind for specific treatment plant equipment / systems that are out of service or are no longer working. Examples of these limited scope projects include restoring two (2) former traveling bridge filter systems to working condition and installing a new mechanical bar screen the City previously procured. Hazen will provide the engineering support the Contractor may need to properly install and commission these equipment systems so that they perform as intended. There may be other projects of this type that the City decides to undertake, in addition to these two projects, for which Hazen can provide the engineering support the Contractor may need. We have included an allowance of $400,000 to cover the effort we anticipate may be needed for engineering support for short-term plant improvement projects.

Project Management

Hazen will perform ongoing project management activities including cost control and monitoring, invoicing, and general coordination with the City's project manager and staff for each of the 9 items of support described under **Scope** that the City authorizes. Each month, we will provide an overall progress report and invoice for authorized tasks similar to the reporting and invoicing process we currently employ for Engineering On-call Contract #23-0516.

Schedule

The work elements described under **Scope** are expected to be completed over the next 30 months, as needed and as directed by City staff. We are prepared to begin our work for the City immediately upon receipt of its written authorization to proceed.

Compensation

We are requesting an initial authorization of $2,718,000 including NMGRT to provide the services that are described under the Scope. Attachment 1 provides a budget breakdown for Items 1 through 7 and 9. As requested by the City, we have deferred estimating the effort for Item 8, pending completion of Items 1 through 7. All work will be performed on a time and materials basis using the labor rates attached to this letter. Please note these labor rates are the same rates used by Hazen for its work under Engineering On-Call Contract #23-0516 with the City of Santa Fe, and which get adjusted annually at the beginning of the City's fiscal year. Expenses may include reimbursable mileage, printing, mailing, supplies, and other similar costs incurred to perform the work. The Hazen Project Manager will provide status reports indicating percent complete by task with each monthly invoice.

Please call me at (505) 259-1679 or Charlie Leder at (505) 236-3889 if you have any questions or would like to discuss further Hazen's plan for providing services to help the City respond to EPA Administrative Order CWA-06-2024-1745.

Sincerely,

Greg Gates, PE
Vice President

Charles S. Leder, PE
Senior Associate

Accepted by City of Santa Fe Public Utilities Department

By: _____ Date: _____

Name: John Dupuis

Title: City of Santa Fe Public Utilities Director

Attachment 1

Proposed budgets for Engineering, Operational Support, and Related Services in Response to EPA Administrative Order CWA-06-2024-1745

Service Item	Proposed time and materials budget
1. Regulatory support	$ 250,000
2. Communications support	$ 25,000
3. Build a comprehensive base of knowledge management tools / roadmaps for PRWRF operations	$ 750,000
4. Improve PRWRF laboratory practices, data management, workflows, and communications	$ 350,000
5. Provide an inventory of all PRWRF instrumentation	$ 250,000
6. Develop a model for treatment operations	$ 300,000
7. Develop a "digital twin" model of plant operations to simulate and help optimize treatment plant operations	$ 200,000
8. Develop tools for remote simulation and testing of proposed changes to plant	TBD
9. Provide engineering support for short-term plant improvement projects at PRWRF	$ 400,000
Total estimated budget for all Items	$ 2,525,000
NMGRT Allowance[1]	$ 193,000
Total budget including applicable NMGRT	$ 2,718,000

1. Estimate calculated using the Albuquerque FY 2024 NMGRT rate of 7.625%. NMGRT will be assessed on labor and subconsultant work performed in New Mexico.

LABOR RATES FOR HAZEN AND SAWYER STAFF

	Rates over next 4 years			
	2023-2024	2024-2025	2025-2026	2026-2027
Vice President / Project Director	$348.91	$359.38	$370.16	$381.26
Senior Associate	$281.39	$289.83	$298.52	$307.48
Associate	$225.11	$231.86	$238.82	$245.98
Senior Principal Engineer	$191.33	$197.07	$202.98	$209.07
Principal Engineer	$168.83	$173.89	$179.11	$184.48
Engineer	$157.58	$162.31	$167.18	$172.20
Assistant Engineer	$135.06	$139.11	$143.28	$147.58
Technician	$112.55	$115.93	$119.41	$122.99
Effective date for rates	7/1/2023	7/1/2024	7/1/2025	7/1/2026

1. Work performed by subconsultants will be billed at cost plus a 10% mark-up

AQUASIGHT
INTELLIGENT WATER SOLUTIONS

March 19, 2024

John Dupuis
Director, Public Utilities Department
City of Santa Fe
200 Lincoln Avenue
Santa Fe, New Mexico 87501

Subject: Proposal for Aquasight APOLLO™ Intelligent Treatment Plant Solution

Dear Mr. Dupuis,

Aquasight is pleased to submit our proposal for implementation the APOLLO™ Intelligent Treatment Plant Solution for the City of Santa Fe Public Works Department.

With the primary goal of supporting your operations team and their successful work to meet all regulatory requirements at the Paseo Real Water Reclamation Facility, the APOLLO™ solution also will support many other benefits such as improved data visibility and mining for laboratory insights, identification of gaps in plant instrumentation, integration of Digital Twin capabilities for better process control, process optimization, and deeper knowledge capture for workforce training and support.

Our implementation program is collaborative, and we will work with your team to ensure project goals are achieved, and the City is provided with a strong foundational program for intelligent water and wastewater solutions.

If you have any questions, feel free to let us know. We look forward to working with the team.

Jonathan Hasson, PE

Vice President, Smart Water Solutions

Cc: Mahesh Lunani, CEO Aquasight

AQUASIGHT
INTELLIGENT WATER SOLUTIONS

SANTA FE PUBLIC UTILITIES

PASEO REAL WATER RECLAMATION FACILITY PROCESS OPTIMIZATION PROJECT PROPOSAL

March 19, 2024

BACKGROUND

The City of Santa Fe, NM provides wastewater collection, treatment, and disposal services for nearly 90,000 residents and businesses. The City owns and operates the 9 MGD annual average daily flow (AADF) (rated for 13 MGD) Paseo Real Water Reclamation Facility which is a conventional activated sludge plant that includes screening and sedimentation for primary treatment, oxidation ditch basins, aeration, and clarification for secondary treatment plus nitrogen reduction, and disk and sand filters, chlorination, and dechlorination for tertiary treatment before discharging into the Santa Fe River (**Figure 1**). The City recently received an Administrative Order for permit exceedances in both E. Coli and Nitrogen. As a measure to ensure improved plant effluent performance, optimize data usage and process performance, the City desires a rapidly deployable, data-driven solution for increase opportunities for successful permit compliance.

The PRWRF has adequate data for some process control, but also could benefit from additional sensors and instrumentation to make it a more data rich facility. Data is generated and stored in a variety of different systems, and many of those systems do not share/communicate data well for daily operational benefits. There is an abundance of untapped potential to integrate and mine this data using science or ML/AI-based algorithms to help with process optimization, capture energy and chemical savings, store process knowledge, create maintenance insights, and assist with troubleshooting. This will require a tool that can provide streaming analytics, smart advisors, Aquasight COPILOT^{TM}, and actionable assistance to the staff to create a data driven O&M culture.

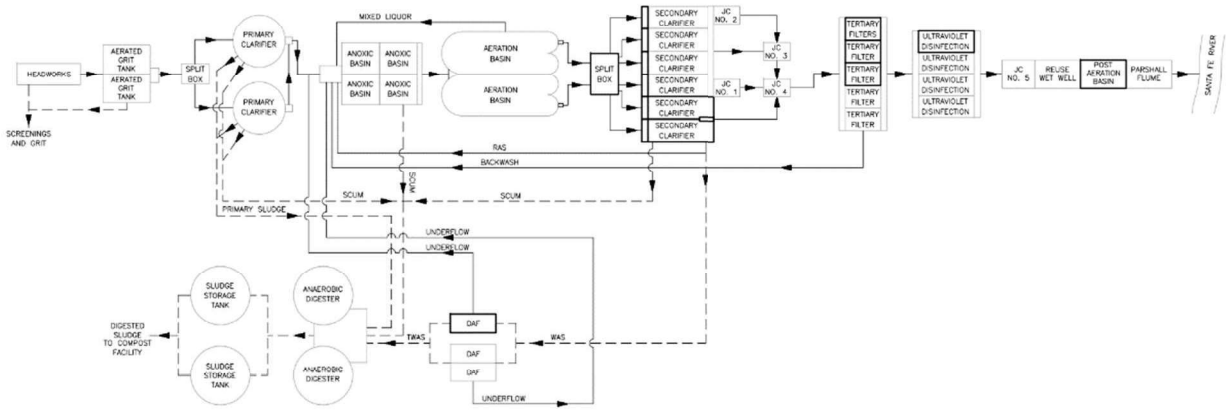

Figure 1: PRWRF Process Flow Diagram

PROJECT GOALS & EXPECTED BENEFITS

The City of Santa Fe Public Works is implementing a strategic initiative to further improve treatment plant effluent performance and reduce operating and maintenance costs by leveraging Aquasight's APOLLO™. The overall goal of this project is to implement a modular real-time advanced analytics and Copilot™ system for liquid unit processes that will support operator success for meeting permit discharge limits and support operational efficiencies for liquid processes that consume the greatest amount of power and chemicals. APOLLO™ will support the City's goals of continuous and measured progress towards the PRWRF optimization goals over time.

Benefits anticipated by implementation of the Aquasight APOLLO™ solution include:

- Deeper integration and sharing of Laboratory sampling data and insights supporting more informed operations.
- Identification of gaps in instrumentation throughout plant processes leading to a more data rich environment for improved process control, optimization, and decision making.
- Implementation of operator focused digital twin functionality allowing for improved real-time streaming insights into potential operational changes and their impacts on process performance KPIs.
- Capture of operational and institutional knowledge by providing a historical record of plant data and operational KPIs for improved new operator training and information recall.

In pursuit of this vision, Aquasight's APOLLO™ software is proposed to assist the City of Santa Fe by:

- Providing a one-stop integrated intelligence dashboarding and analysis solution.
- Integrating a copilot system with built in smart advisors.
- Driving energy and chemical savings and enabling fine tuning of control setpoints.
- Improving daily plant workflow and empowering a data driven decision culture.

- Storing operator knowledge to de-risk operator churn and retirements.
- Providing management visibility through remote off-site access.
- Highlighting compliance risks while providing quick access to process data.
- Enabling predictive maintenance of aeration and disinfection equipment.
- Providing robust tools for workforce training on plant performance at various flows and loads.
- Providing quick access of data for planning and engineering teams.
- Including monitoring and notifications on complex parameters.

Examples of the main dashboard for the aeration and secondary clarifier modules in action are provided in **Figure 2** and **Figure 3**, respectively.

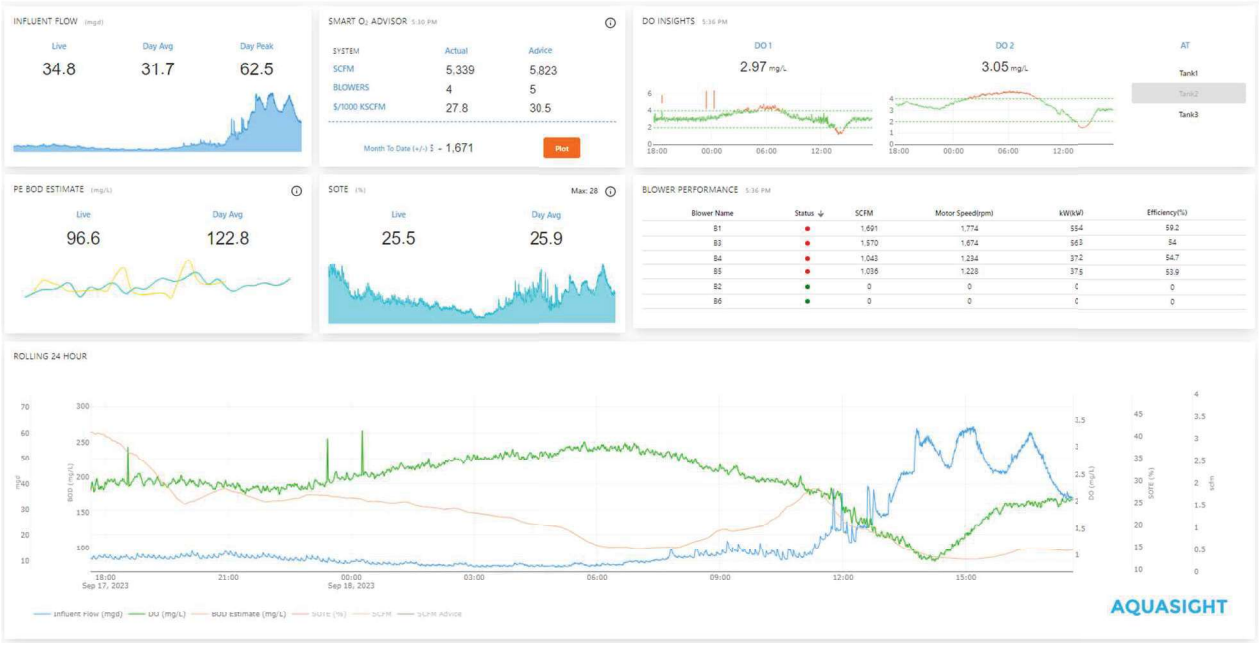

Figure 2: Example of APOLLO's™ Activated Sludge (Aeration) Module

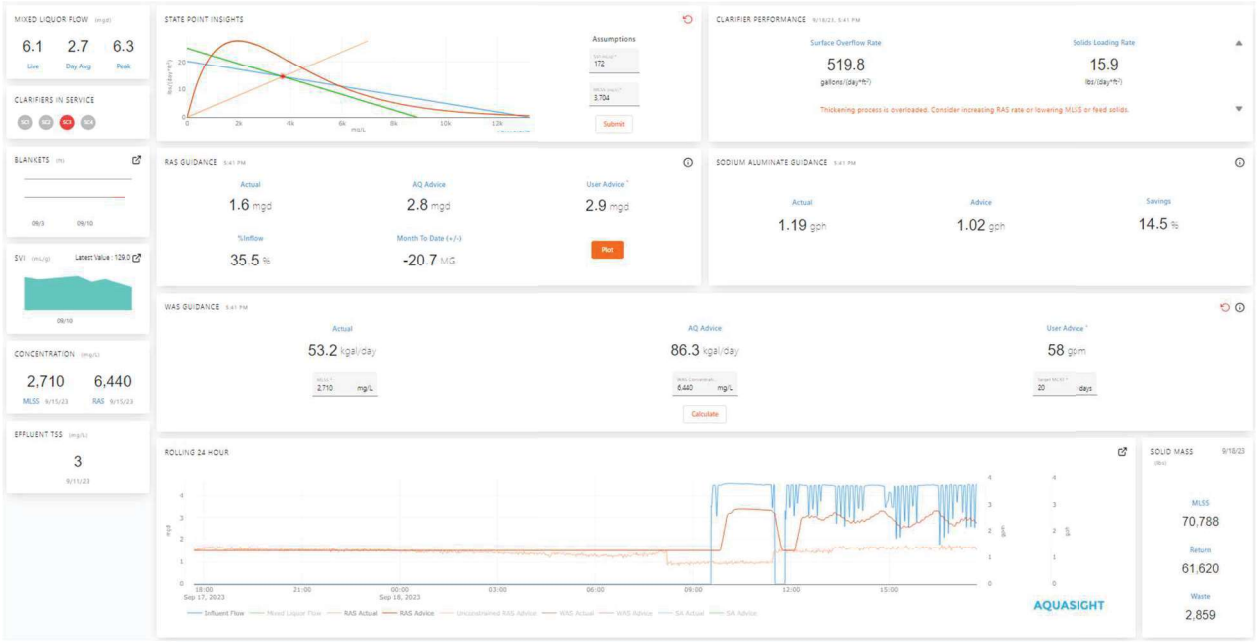

Figure 3: Example of APOLLO's™ Secondary Clarifier Module

SCOPE OF WORK

Generally, the scope of this project includes onboarding the PRWRF to Aquasight's APOLLO™ software equipped with seven (7) modules. The SCOPE OF WORK may change in the future depending on the needs of the plant. The final SOW will be determined in collaboration with the Utility team.

Table 1: Proposed APOLLO modules for PRWRF

Module	Description
Plant Dashboard	Default APOLLO™ module – Customizable dashboard that allows users to centralize analytics from various APOLLO™ modules to a single screen.
Weather	Default APOLLO™ module – Live weather radar with various meteorological layers.
Secondary Treatment – Activated Sludge	Focused on the aeration process, this module includes monitoring, analytics, and copilot dashboard and a detailed decode feature for analyzing aerator and process performance.
Secondary Treatment – Secondary Clarifiers	Focused on the secondary clarification process and RAS/WAS pumping, this module includes monitoring, analytics, and copilot

Module	Description
	dashboard and a detailed decode feature for analyzing process performance.
Disinfection	Focused on the UV disinfection with supplemental chlorination and dechlorination process, this module includes monitoring, analytics, and copilot dashboard and a detailed decode feature for analyzing permit compliance and process performance.
Lab Insights	Default APOLLO™ module – Provides users with a robust plotting tool for lab, live, and analytical data.
SAMI	Default APOLLO™ module – Digital alert system with customizable alert thresholds for parameters of the most critical interest.

Additionally, Aquasight will review data sources, data completeness, and instrumentation coverage for the PRWRF. We will make recommendations for additional instrumentation as may be necessary to optimize the data rich environment necessary for an optimized process solution.

The project goals described above will be completed through the following tasks:

Task 0 – Project Management
Task 1 – Data Polling
Task 2 – Site Visit and Plant Review Including Instrumentation Review and Recommendations
Task 3 – Aeration Onboarding
Task 4 – Secondary Clarifier & RAS/WAS Pumping Onboarding
Task 5 – UV Disinfection/Chlorination/Dechlorination Onboarding
Task 6 – Default Module Configuration
Task 7 – Training and Adoption

Appendix B: Project Milestones, Timeline, and Deliverables

The Aquasight scope of work for this project will have four key milestones and associated deliverables and will be implemented with approximately the following timelines (**Table 2)**. The timeline is subject to change by mutual agreement between Aquasight and the City of Santa Fe.

Table 2: Project Delivery Calendar

Milestones	WEEKS from Notice to Proceed	Aquasight Deliverables
1. Design Review, Instrumentation Review, Data Polling, Connections, Lab & Live Insights	~ 12 weeks	• APOLLO™ Release 1 – Lab Insights • Milestone 1 Report
2. Secondary Process & Aeration Modules	~ 16 weeks	• APOLLO™ Release 2 – Secondary & Aeration Modules • Milestone 2 Report
3. Disinfection Module & SAMI Alerts	~ 22 weeks	• APOLLO™ Release 3 – Disinfection Module & SAMI Alerts • Milestone 3 Report
4. Plant Dashboard, Training & Adoption	~ 26 weeks	• APOLLO™ Release 4 – Plant Dashboard, Training, & Adoption • APOLLO™ User Manual • Virtual Training Sessions

Appendix C: Required Participation from Santa Fe Public Works

DATA REQUIREMENTS

The following information is required from Santa Fe Public Works for successful project completion:

- Public Works SCADA Data Historian access,
- Public Works LIMS database access,
- Any applicable sensor/instrumentation API details,
- Where applicable, process data spreadsheets and mechanism to routinely upload,
- Process SOP's,
- Process design data,
- Equipment manufacturer information (specs, O&M manuals, etc.)
- Plant drawings of relevant processes,
- Energy bills,
- Control strategy documentation for automated control systems, and
- Plant budget and cost sheets

Where information is not available, assumptions will be made and discussed with Santa Fe Public Works team before implementing it in the APOLLO™ System.

O&M, SCADA, LAB, AND DESIGN CLARIFICATION MEETINGS

During deployment, in addition to or as a part of any project management meetings, Aquasight may request meetings with key Public Works staff. Such meetings are important to clarify operations, understand assumptions, and agree on key configurations in APOLLO™ systems.

Appendix D: Project Fee

Aquasight proposes the following Not-To-Exceed project fee for the APOLLO™ solution implementation for the City of Santa Fe Public Works Paseo Real Water Reclamation Facility:

APOLLO™ Onboarding Fee: **Not to Exceed $200,000**
APOLLO™ Annual Fee: **$50,000 per year, minimum three-year contract**

The project billing schedule will be included in the final contract documents, and shall have the basic invoice timing noted below:

- The Onboarding Fee shall be billed in monthly payments during the Onboarding period (estimated over 6 months) with the first Onboarding payment due at contract signing.
- The Annual Fee shall be billed at the beginning of each calendar year, with the first year Annual Fee billed at contract signing.

The following activities are covered in the annual fee:

- **APOLLO™ technology usage:** APOLLO™ technology that has been developed by Aquasight is the core foundation of this project. The technology will be the backbone for releases, metrics, advisors, KPIs and is accessible anywhere, on any device and at any time.
- **APOLLO™ system operations:** APOLLO™ system operations include lab and live database management, analytical scripts management, API management and user preferences, credential, and security management.
- **Infrastructure management:** APOLLO™ runs on several virtual machines and servers. These servers require upkeep and maintenance include software library updates, monitoring of infrastructure metrics and hardware management.
- **Advisor upkeep and maintenance:** Advisors require quality data inputs; unforeseen bad data quality events do occur in practical environment and advisors must be evolved to ensure it discards bad data or debugged to ensure optimal performance of smart advisors.
- **Ticket management and Help desk:** Access Aquasight help desk will operate 8:00 am to 5:00 pm EST during weekdays for any issues such as user access, applications and/or routine troubleshooting. Any high priority issue Aquasight will address in 1-to-4-hour time frame depending on type and nature of this issue during business hours and during weekend and holidays within 24-to-48-hour time frame.
- **SAMI:** Alert's system that manages e-mails, notifications, alert statistics, thresholds management and user settings.
- **Bug fixes:** If we detect any issues or bugs in optimal running of software or technology, Aquasight will fix free of cost and repair those bugs.
- **Data polling maintenance:** Polling software is installed in virtual machine within Santa Fe Public Works. When tag names are changed and database connections are reconfigured, this require polling software to be updated. Public Works should inform or discuss with Aquasight

before making changes on setting and access credentials which may disrupt the flow of data streaming to APOLLO™.

- **Free feature upgrade as part of APOLLO™ product roadmap:** Aquasight continuously evolves its technology and features for driving more value to customers. Such features will be available for free at no additional cost if they are part of the standard product roadmap.

Rain For Rent
2495 Lakeside Dr
Las Cruces, NM, 88007
575-524-0879
rainforrent.com
kconnell@rainforrent.com

BUCKMAN DIRECT DIVERSION
Account: 134939
341 CAJA DEL RIO RD Dba City Of Santa Fe
Santa Fe, NM, 87506
Michael Dozier
505-577-1132
Mldozier@santafenm.gov

Dear Michael Dozier,

Thank you for your inquiry. As requested, please find attached our proposal 1101-IND-2113715 for City of Santa Fe WWTP. We value this opportunity to provide a solution for your liquid handling need and we are committed to partnering with you to ensure your project's safe execution and completion.

To convert this proposal into a confirmed order WITHOUT ANY CHANGES, please click the "Start Signing" button to begin the electronic signature process.

If you would like to CHANGE anything in this proposal or discuss anything further, please call Kimbro Connell at 575-524-0879.

Thank you, and I look forward to working with you.

Regards,

Kimbro Connell
kconnell@rainforrent.com
Mobile: 505-436-0920
Branch: 575-524-0879
2495 Lakeside Dr
Las Cruces, NM, 88007

Project Name	City of Santa Fe WWTP	Jobsite	City of Santa Fe WWTP
Date Prepared	3/22/2024	Est. Delivery Date	4/1/2024
Prevailing Wage	No	Est. Completion Date	4/1/2025

Project Location

73 Paseo Real
Santa Fe, NM, 87507

Project Description and Overview

PROJECT DESCRIPTION

Quoted as 28day cycle rental

Does not include applicable sales tax or services

PROJECT OVERVIEW

Provide pump and filtration equipment for max flows of 5mgd at final clarification.

STATEMENT OF WORK

RFR Responsibilities & Scope of Work

Rain for Rent (RFR) will provide the following: Provide pump and filtration equipment for max flows of 5mgd at final clarification. (2) 60-4SK, (1) 48-4SK, DV200E pump, HDPE pipe and misc fittings.
Delivery, installation, removal, pickup of all quoted materials/equipment

Due to the multitude of economic factors, materials, labor, hauling and freight are currently in a period of above average volatility. If, during the performance of work, the price of materials, labor, hauling or freight increases by 5% or greater through no fault of Rain for Rent, the contract price shall be equitably adjusted by an amount reasonably necessary to cover any such price increases. Equipment subject to availability at time of project.

Reference Materials

Project is quoted based on applicable/customer provided reference materials noted below:
Job Walk(s) 3-13-2023

Operating Parameters

System includes: Sand Media
System is designed to operate at a flow rate of 5mgd peak @ 80tdh
The water source location will be clarifor and discharging at location after clarifor. .

Customer Responsibilities

It is the customer's responsibility to inform RFR about prevailing wage at time of proposal. If RFR is informed after the quote is issued that certified payroll is required, quote will be subject to additional charges.

Jobsite:
Customer is responsible for:
1. Informing RFR of any jobsite or general requirement(s) to perform work on location.
2. Securing permits, fees, bonding, right of ways, vehicular/pedestrian traffic control, and security.
3. Providing safe, secure access and egress to an adequate staging area throughout the job which could include brush clearing, grading, and removal or replacement of any landscape or hardscape in the temporary right of way for the equipment.
4. Any damage to the environment including trees, vegetation, stream banks, or any other part of the site caused by the installation, removal, construction, pulling or dragging of equipment, or operation of the equipment that would require site restoration or environmental countermeasures.

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5. Any excavation, saw cutting, trench plating for the purpose of road crossings, backfilling, restoration, modification, or alteration of any permanent structure or site element including changes to pump pad preparation, suction, or discharge chambers during duration of job (including installation and removal).

System:

1. Customer will provide dedicated equipment with operator and fuel to perform all needed unloading, testing, operations, maintenance, relocating, cleaning, and reloading of provided equipment/system. Equipment must be capable of lifting 9000 Lbs.
2. If installation provided by RFR and Customer is operating system, this Transfer of Operation form will need to be reviewed and signed by both parties upon completion of setup. (sample form only): **https://rainforrentcorp.box.com/v/systemtransferoperation**
3. Customer will provide fueling.
4. Customer will provide preventative maintenance as recommended by manufacturer or per the Rental Agreement. **https://rainforrentcorp.box.com/v/pumpmaintenance**
5. Customer will supply all needed water for the commissioning, startup, and system testing. Project specific criteria for hydrotesting can be provided at an additional charge.
6. By accepting this quotation, the customer has acknowledged that the equipment proposed herein is suitable for its intended application and accepts all liabilities associated with its use. Customer is responsible for compliance with appropriate liquid/material quality standards, regulations, and testing protocols to meet all federal, state, local and job location specific requirements. Customer is responsible for all waste materials associated with this equipment/system.
7. RFR recommends a small-scale trial run of this product application to ensure system effectiveness. RFR does not warranty the water quality or degree of filtration. At customer request, RFR can perform a Total Suspended Solids (TSS) bench test to better select the appropriate media for optimized filtration effectiveness. Customer will be responsible for the cost of all media.
8. The customer will be designated as the generator for all liquid/solids processed with the use of RFR equipment. All used filtration media, such as carbon, sand, cartridges, bags, coalescing packs, etc. becomes the property of customer and is the responsibility of customer for proper disposal.
9. To activate carbon, customer will need to pre-soak for 24 hours.
10. RFR has not included the cost of the removal and regeneration for non-hazardous carbon. Customer is responsible for TCLP sample for TCLP VOC's, TCLP SVOC's, TCLP RCRA 8, pH. **https://rainforrentcorp.box.com/v/carbongenerator** If the carbon is deemed hazardous and cannot be regenerated, customer is responsible for additional disposal costs and/or final disposal. No media or materials will leave the site unless the TCLP RCRA 8 has been received and deemed non-hazardous unless otherwise noted.
11. RFR equipment/vessels will be taken off rent when the required testing has been submitted and accepted by RFR/Source Carbon Supplier for recycling and or disposal. Vessels cannot be removed until we receive and accept the testing that indicates the carbon is deemed NON-HAZARDOUS. At that time, the equipment will be taken off rent and be scheduled for pick-up from the site. Should the carbon be deemed HAZARDOUS the customer will be responsible to pay a third party for the chain of custody, transportation, and disposal of this material.
12. Additional cleaning and/or inspections may be required if tested material is deemed anything besides non-hazardous.

Customer is responsible for:

1. Any work in confined spaces.
2. Protecting system from damage including any freeze protection necessary to safeguard equipment from damage. Should equipment become frozen and damaged, customer is responsible for repair of equipment. RFR can provide necessary freeze protection at an additional charge per executed change order. Equipment stays on rent until it can be returned.
3. Using equipment in a safe and proper manner in accordance with manufacturers' recommendations, regulatory standards, and industry best practices. Improper usage may cause equipment/system failure, damage, possible incidents, injuries, and spills.

Upon Pickup:

Contact the RFR office at 575-524-0879 to schedule pickup when equipment/system is cleaned and ready to be released.
Flushing and cleaning of equipment must be performed to RFR's standards prior to being called off rent. RFR personnel will perform a visual inspection. It is recommended to have a customer representative on-site during inspection. Equipment found not to be in "delivered condition" will not be picked up. e picked up.

Project Scheduling & Billing

This quote is valid for 30 days. For the quoted items, RFR requires a signed quote not less than 14 days prior to delivery.

Estimated schedule durations:
Mobilization: 2 days
Installation: 3 days
Operation: TBD
Removal: 2 days
Demobilization: 1 day
System Rental Duration: 1 year or more

Customer acknowledges that availability of equipment/system and/or media will be confirmed at time of order. Additional freight charges may

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apply subject to mutually agreed upon change order.

Billing

1. This is an estimate only. Actual Time and Material used for this job will be billed to the customer.
Any re-rented equipment may be billed according to the third party's billing period. All billing subject to our standard terms and conditions in the rental agreement.
A minimum 2 hour charge will be assessed in the event the crew is at site and weather forces cancellation of work for remainder of day.

Rain for Rent's standard hours of operation are 7:30am – 4:00pm Monday – Friday. Time outside of normal business hours will be billed at 1.5x the base rate for Transportation and Service

Safety

Each employee is expected to adhere to the RFR Environmental, Health and Safety programs, which will protect the environment, the health and safety of the customer, employees, and others. RFR asks for your full cooperation to succeed in this expected outcome.

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PROJECT COSTS	
Estimated Rental Total	$21,159.93
Estimated Environmental Recovery Fees	$687.70
Total Estimated Recurring Charges	$21,847.63
PROJECT COSTS	
Estimated Sale Total	$9,479.40
SERVICES	
Estimated Delivery	$14,818.04
Estimated Installation	$13,883.00
Estimated Removal	$8,018.00
Estimated Pickup	$2,618.04
GRAND TOTAL	$70,664.11

-Estimated costs do not include taxes

-Recurring rental project costs will be on a cycle/week/day basis+ tax

Engine driven equipment will be delivered with at least 50% fuel. A Fuel Convenience Charge will be implemented on a per gallon basis up to the delivered fuel level. Customer acknowledges that the Fuel Convenience Charge is not a retail sale of fuel. Customer may avoid the Fuel Convenience Charge if the Customer returns the Equipment at delivered level. The fuel convenience fee will be charged per gallon. No refunds will be given for a higher level of fuel upon return.

Customer Name _____ Customer Signature _____ Date _____

Proposal Acknowledgement

By signing this proposal, customer represents that he/she has read and agreed to both the Statement of Work and Quote Agreement sections, and is also agreeing to the grand total amount listed above, plus any recommended optional items if accepted and initialed. If customer requires a Purchase Order number to process and submit payment, it must be supplied to Rain for Rent at the time of acceptance of this proposal.

PO Number: _____

Rental Protection Plan

I have received and reviewed the Rental Protection Plan Agreement incorporated as the last page of this estimate. By initialing this paragraph, I understand that I am agreeing to enter into and be bound by the terms of the Rental Protection Plan Program Agreement and that I am authorized to enter into this Agreement on behalf of Customer. FOR ALL RENTALS OF EQUIPMENT, EXCEPT THOSE SPECIFICALLY EXCLUDED, YOU MAY EITHER SHOW PROOF OF PROPERTY INSURANCE IN ACCORDANCE WITH INSURANCE REQUIREMENTS AND RENTAL AGREEMENT OR PURCHASE THE RENTAL PROTECTION. THE PURCHASE OF THE RENTAL PROTECTION PLAN FOR RENTALS OF EQUIPMENT IS NOT MANDATORY AND MAY BE DECLINED IF YOU HAVE PROOF OF ALL RISK PROPERTY INSURANCE AS REQUIRED BY CONTRACT.

RPP	$3,174.00	Accept ○	Decline ○

INITIAL _____

Created Date: 3/20/2024

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Quote Agreement

If Customer has entered into a Master Service Agreement with Rain for Rent and there is a conflict between these terms and conditions of this Quotation Agreement and the Customer's Master Service Agreement, then the terms and conditions in the Customer's Master Service Agreement signed by Rain for Rent will prevail. Availability of products and services is subject to change without notice. Payment terms are net 30 days from invoice date. Interest at the rate of 18% per year shall be charged on any past due invoice. A Fuel Surcharge will be calculated and invoiced based on the diesel fuel price as published by the Department of Energy on https://www.eia.gov/petroleum/gasdiesel An Environmental Recovery Fee shall apply to all rental charges invoiced for the duration of the rental pursuant to this quote/Estimate to help offset direct and indirect costs associated with regulatory compliance, obtaining permits, and obtaining licenses. California Air Quality Fee will be added to the cost of diesel pumps used in California only. This is a State mandated fee. Customer is prohibited from deducting retention from Rain for Rent invoices and charging Rain for Rent liquidated damages. Customer is responsible for flushing and cleaning tanks, roll off boxes, pipelines, pumps, filters and other Rain for Rent equipment prior to return unless specifically agreed to by both parties in writing. The Terms and Conditions of the Rain For Rent Rental and Hazardous Material and/or Non-Hazardous Waste Agreement, Credit Application/Master Rental & Sales Agreement, Invoice and this Quotation (also known as the Rain for Rent Rental/Sale Estimate as may be referenced in any Master Service Agreement, Blanket Purchase Order, or any other contractual document executed between the parties) contain the complete and final agreement between Rain for Rent and Customer and no other agreement in any way modifying or adding to any of said Terms and Conditions will be binding upon Rain for Rent unless made in writing and signed by a Rain for Rent Corporate Officer or Rain for Rent authorized representative. The Customer cannot alter the equipment without Rain for Rent's prior written approval. Customer is responsible for equipment, repairs, maintenance and damage, excluding normal wear and tear or damage caused by Rain for Rent. Rain for Rent will service all engine driven equipment at 400 hours of runtime or as required by manufacturer specifications, if less than 400 hours. Labor will be billed on a time and materials basis, portal to portal from nearest Rain for Rent location. Prorated billing will occur if rental is returned prior to 400 hours. All returned equipment is subject to inspection by Rain for Rent personnel. Damages and accrued rent will be invoiced to Customer while equipment is out of service for repairs. The Customer is responsible for damage caused by reactive, corrosive or abrasive material; including, but not limited to sand, sodium hydroxide, chlorine, and acids. Customer must notify Rain for Rent immediately of any spill so that any necessary repairs to the system can be made and to minimize service interruption. The Customer assumes all risks of loss due to operation and use of the equipment. Customer will provide "all risk" property insurance for rented equipment. Customer shall pay Rain for Rent additional expenses caused by unforeseen or changing conditions, including, but not limited to, soil, underground conditions, rock formations, environmental conditions, weather events, regulations or restrictions, hard pan, boulders, cesspools, gas lines, waterlines, drain pipes, underground electrical conduits or other above ground or underground obstructions. All equipment rented or used products sold are provided "AS IS, WHERE IS" in their present condition. Rain for Rent makes no warranties, expressed or implied of any kind whatsoever with respect to the equipment or products. Sold equipment is not to be rented. Customer agrees that customer is renting equipment or purchasing used products based on their judgment and evaluation, without reliance upon any statements of representations by Rain for Rent, and that Rain for Rent is not responsible for any defects in their operation or for any repairs, parts or services, unless otherwise noted. All new products sold are provided without warranty beyond the terms of such warranty offered by the manufacturer, if any. Customer must comply with all original manufacturer's terms and conditions for any warranty claims that may arise. Neither Rain for Rent nor the manufacturer warranties the product if it has failed due to corrosion, misuse or damage; (2) it has been altered, repaired or modified in any way that would adversely affect its operation; or (3) it was installed or operated other than in accordance with manufacturer's operating instructions. Products supplied by Rain for Rent are warranted to be free from any defect in workmanship and material under conditions of normal use and service. Rain for Rent's obligation under this warranty is limited to replacing or repairing at the designated manufacturer's or Rain for Rent facility any part or parts returned to it with transportation charges prepaid, which Rain for Rent determines in its sole discretion to be defective. This Quotation excludes any additional costs to Rain for Rent associated with Owner Controlled Insurance (OCIP) or WRAP insurance programs that will be added to Rain for Rent's prices. De-watering, Roll-off, Vacuum boxes and similar equipment are not liquid tight. Rentee accepts full responsibility for all losses, damages and costs caused by or arising out of spills, leakage or discharge from this equipment. Rain for Rent will not be held liable for any structural or soils subsidence. This Quotation is valid for 30 days and is subject to credit approval. Rain for Rent will take every effort to protect our customers and employees. Due to the current pandemic, all quoted equipment and services are subject to delay, change, or unilateral cancelation by Rain for Rent. Please be assured every effort will be made to execute the quote as written. The customer is responsible to inform Rain for Rent of any jobsite hazards, precautions, or entry requirements relating to the Corona Virus prior to Rain for Rent personnel going onsite to perform work or deliver equipment. This includes informing Rain for Rent if anyone at the jobsite has tested positive and provide a list of actions taken to protect Rain for Rent personnel.

Rental Protection Plan Program Agreement

If you elect to maintain All Risk Property Insurance coverage, and the certificate of insurance You provide to Rain for Rent to evidence Your insurance coverage expires or is cancelled for any reason, You agree Rain for Rent may charge RPP for Your rentals until such time as You provide an acceptable and valid certificate of insurance to Rain for Rent. This Rental Protection Plan Program Agreement (this "RPP Agreement") is entered into between the undersigned Rentor and Rentee in relation to the Master Rental and Sales Agreement (MRSA) between Rentor and Rentee. If Rentee has checked or initialed, as applicable, the Rental Protection Plan Program (the "RPP Program") box on the quote, then Rentee has opted-in to the RPP Program and this RPPP Agreement shall supplement the MSRA whether or not executed by Rentee. Rentee understands and agrees that the RPP Program is not insurance and that the RPP Program provides only limited coverage, as described below.1.Cost; Deductible; Maximum Coverage; Rentee shall pay a fee equal to 15 percent (15%) of the rental charge for each covered item, which fee shall be listed on each invoice during which period Rentee has opted to participate in the RPP Program. In the event of a Covered Occurrence, as defined below, Rentee shall further be responsible for the lesser of $500 or 10 percent (10%) of the total loss, as a deductible. The maximum coverage available under the RPP Program is $150,000 per Covered Occurrence, whether or not there is more than one piece of equipment involved in the occurrence.2.Coverage; The RPP Program provides coverage only for losses involving Covered Equipment, as defined below, in the following instances: fire that was not caused by Rentee's gross negligence or willful misconduct; theft for which a police report was filed, and that occurred despite Rentee's reasonable precautions to protect and secure the covered equipment; and vandalism for which a police report was filed (individually, "Covered Occurrence," and collectively, "Covered Occurrence"). The RPP Program provides coverage only for the following types of equipment: pumps, electric submersible pumps, tanks, generators, light towers, filtration, boxes, heaters, spillguards, safety products, sprinklers, hoses, pipe, valves and fittings ("Covered Equipment"). Coverage does not extend to any equipment not owned by Rentor such as re-rented equipment.3.Exclusions; The RPP program does not cover any equipment or event of loss that is not specifically described in Section 2.Without limiting the foregoing, the RPP Program does not provide coverage for the following: misuse of equipment; willful abuse of equipment; failure to maintain equipment; failure to secure items from theft (including but not limited to failing to store items in a fenced, locked area or failing to maintain personnel on site); damage or theft while in transit to or from a jobsite; corrosion from any source; any damage caused by named storm events; any instance that occurs while the account is not in good standing, such as a default as defined in the MRSA or upon written notice of non-payment; and any occurrence not reported to Rentor within 24 hours after the occurrence. The RPP program does not provide coverage for: electronic equipment (controls, instrumentation, and wiring), flow meters, water meters, wheel wash systems & accessories, Freezesentry items, or tires.4.Claims; All claims must be submitted within 24 hours of the Covered Occurrence. Rentor's mechanic will inspect the equipment following any claim. The mechanic's findings as to the cause of the damage and cost of repair will be final. In the event of a theft or vandalism, Rentee must also provide supporting evidence that the site was secured at the time of loss.

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Emergency Determination Form WW AO Support

Final Audit Report 2024-04-04

Created:	2024-04-03
By:	Kristy Miera (kamiera@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAf0L7Wg8VU-YEpL4sCq3jWDcINOsdtZl3

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Signer jwblair@santafenm.gov entered name at signing as John Blair
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Agreement completed.
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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.

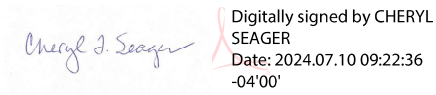
Failure to comply with this Section 309(a)(3) Compliance Order or the Act may result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

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

Newterra - Emergency Determination 250203

Final Audit Report 2025-02-08

Created:	2025-02-04
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Emergency

CITY OF SANTA FE
GENERAL SERVICES CONTRACT

Rental Agreement for six 60HP AIRE-O2 Triton 2.0 Aerators

THIS CONTRACT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City," and **Newterra Corporation Inc.,** herein after referred to as the "Contractor", effective as of the date of the final signature.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

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

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

2. **Scope of Work**

A. The Contractor shall provide the following services:

Additional six month rental service commencing on the effective date of this contract for existing six (6) 60HP AIRE-O2 Triton® 2.0 Aerator, consisting of:

- 60HP, 230/460 volt, 3-phase, 900 RPM, TEFC, premium efficiency motor
- 10HP regenerative blower (SOTR = 162.2 lbs O2 / hr each)
- Field replaceable, water-lubricated lower bearing
- Field replaceable, water-resistant sleeve
- 316 SS dual-blade primary PowerMix™ propeller
- 304 SS Saturn Ring diffuser
- 304 SS housing, mounting flange, and hollow shaft
- Eight (8) molded, LDPE, closed-cell foam filled pontoons
- 304 SS rails and mounting hardware
- Vortex shield attached to frame

Includes six (6) month Warranty.

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3. Compensation.

Compensation Schedule. The City shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in paragraph C of this Clause.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of forty one thousand six hundred sixty four dollars ($41,664.00) per Month, such compensation not to exceed two hundred forty nine thousand nine hundred eighty four thousand ($249,984.00), excluding gross receipts tax.

Payment. The total compensation under t**his Agreement shall not exceed $249,984.00** excluding New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

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

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

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

5. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This contract shall terminate **six (6) months from the effective date of the contract.** The City reserves the right to renew this contract on a month-to-month basis by mutual agreement in writing and subject to the availability of appropriations, not to exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152. ,

6. **Default and Force Majeure**

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

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

7. **Termination**

A. Grounds. The City may terminate this 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) The City shall give the 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 17, "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.*

8. **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 Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

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

10. **Assignment**

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

11. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this 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.

12. **Non-Collusion**

In signing this Contract, 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.

13. **Inspection of Plant**

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

14. **Commercial Warranty**

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

15. **Condition of Proposed Items**

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

16. **Records and Audit**

During the term of this Contract and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to

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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.

17. **Appropriations**

The terms of this Contract, and any orders placed under it, 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 legislature, this Contract, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the 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.

18. **Release**

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

19. **Confidentiality**

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

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this 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. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this 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 Paragraph 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 Paragraph 20 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 Paragraph 20 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.

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

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

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

22. **Scope of Contract; 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.

23. **Notice**

The Procurement Code, 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 bribes, gratuities, and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this 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.

25. **Indemnification**

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

26. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this 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.

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27. **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.

28. **Limitation of Liability**

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

29. **Incorporation by Reference and Precedence**

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

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

30. **Workers' Compensation**

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

31. **Inspection**

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

32. **Inspection of Services**

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

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

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

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

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

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

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

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

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

(2) terminate the contract for default.

33. **Insurance**

If the services contemplated under this 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.

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34. **Impracticality of Performance**

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

35. **Invalid Term or Condition**

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

36. **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.

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

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

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

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

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

38. **Survival**

The Contract paragraphs titled "Patent, Copyright, Trademark, and Trade Secret

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Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Contract. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Contract shall survive this Contract.

39. **Disclosure Regarding Responsibility**

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

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

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

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

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

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

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

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

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entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Contract.

41. **Notification**

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

To the City: LeRoy Alvarado
Operations Supervisor
Wastewater Management Division
CITY OF SANTA FE
73 Paseo Real
Santa Fe, NM 87507
Cell: 505-469-5358
e-mail: lmalvarado@santafenm.gov

To the Contractor: Jim Hentges
Lifecycle Technical Sales
Newterra Corporation Inc.
1215 Chaska Creek Blvd
Chaska, Minnesota 55318
Ph. 952-556-5706
e-mail: jhentges@newterra.com

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

To the Contractor: Jim Hentges
Lifecycle Technical Sales
Newterar Corporation Inc.
1215 Chaska Creek Blvd

Docusign Envelope ID: 9B157BE7-BF2B-4602-B651-863A402239EE

Chaska, Minnesota 55318
Ph. 952-556-5706
e-mail: jhentges@newterra.com

42. **Succession**

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

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:
Newterra Corporation Inc

DocuSigned by:
Doug Conley
01449F9FBECC4FD...
Doug Conley – VP Sales

DATE: 2025-02-26 | 13:10 PST

NMBTIN#:

ATTEST:

ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 27, 2025 10:12 MST)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
EMILY OSTER, FINANCE DIRECTOR

MUFFIN MONSTER®

In-line/Open-channel Grinders

Muffin Monster sewage grinders are designed to protect pumps and other equipment by grinding down the toughest wastewater solids. Applications include: lift stations, sludge lines, septage receiving stations, headworks screenings reduction, prisons and more.

10K Series Muffin Monster®

The 10K Series Muffin Monster is a compact grinder, tough on solids in sludge and sewage applications. It fits into areas with limited space requirements while still providing the necessary power for downstream protection. The 10K Series is an ideal, low-cost solution that goes beyond sludge grinding at resource recovery facilities and fits perfectly into office buildings, apartment complexes, resorts, retail centers and package treatment plants.

30K Series Muffin Monster®

Troublesome solids are now easier than ever to reduce with the Muffin Monster dual-shafted grinder. Its slow-speed, high-torque design shreds tough solids that typically cause sewer problems. With over 40,000 installations, the Muffin Monster is legendary for providing solutions that meet the increasingly demanding needs of wastewater operations.

40K Series Muffin Monster®

The 40K Series Muffin Monster excels in wet and dry grinding applications. It's a powerful shredder for large sludge processing systems. It also serves in many industrial applications including fish and beef processing, petroleum, pulp and paper mills, chemical plants and recycling plants. The 40K is designed to handle the highest solids loading environments.

Wipes Ready® Technology

Wipes Ready® cutters*

Achieve the desired two-dimensional cutting capabilities to control both the width and length of output, preventing materials from forming long strips and reweaving in the waste stream.

- **Cut wipes in two directions**
- **Smaller particle size = No reweaving**

* patent pending

Features

Dual-shafted grinder

- Slow-speed, high-torque grinders handle rags, rocks, wood, wipes, clothing, plastics and other debris
- Capable of grinding a wider variety of solids than single-shafted machines, macerators and chopper pumps

Compact and efficient design

- Adapts to pipelines or channels with little or no modification
- Custom stainless steel frames allow easy installation in channels, wet wells and pump stations
- In-line 30K Muffin Monster incorporates an easy-to-remove cutter cartridge

Automated monitoring and controls

- Load-sensing and reversal mechanism to optimize grinder's performance

Benefits

Equipment protection

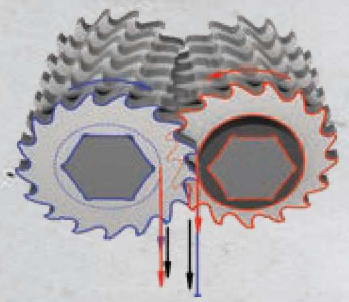
- Protect pumps and other critical equipment from costly clogs and damage from tough solids

Efficient treatment operations

- Grinding separates organic from inorganic materials in the waste stream
- Organics stay in the treatment process and screens are cleaner

Lower Operating Cost

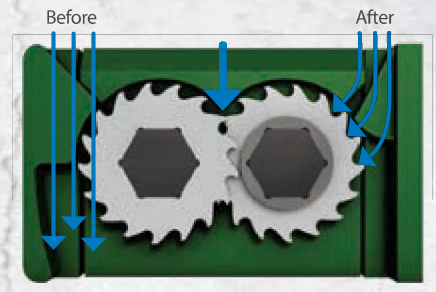
- Clear pipes and pumps means shorter pump run cycles and lower electrical costs



Optimized cut control

Improve cutting by tailoring the speed of the new Wipes Ready cutter rotation with patented optimized cut control.

- **Cutters stay clean**
- **Prevents long strips**



Patented Delta P side rails

Ensure the capture of all items in the waste stream and drive debris into the cutter stack with patented side rail design.

- **Drive debris into cutters**
- **Prevent buildup**
- **Enhance high flow**

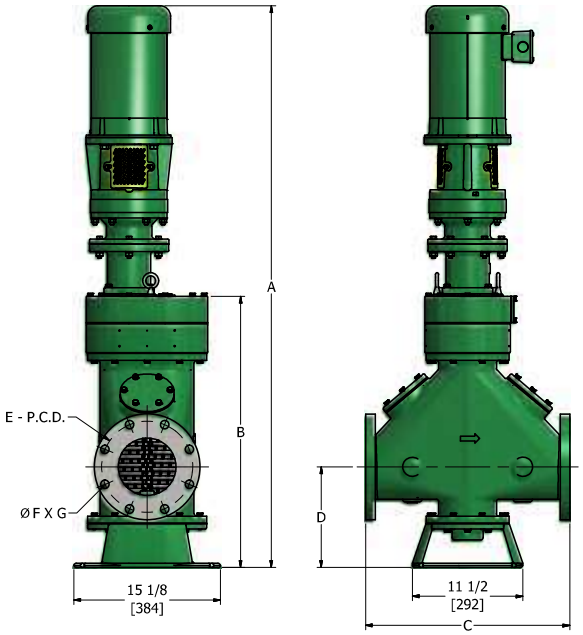
30K series Muffin Monster

Materials of construction

Housings: Ductile iron
Cutters: Hardened alloy steel
Shafts: Hardened alloy steel
Mechanical Seals: Tungsten carbide faces

Specifications

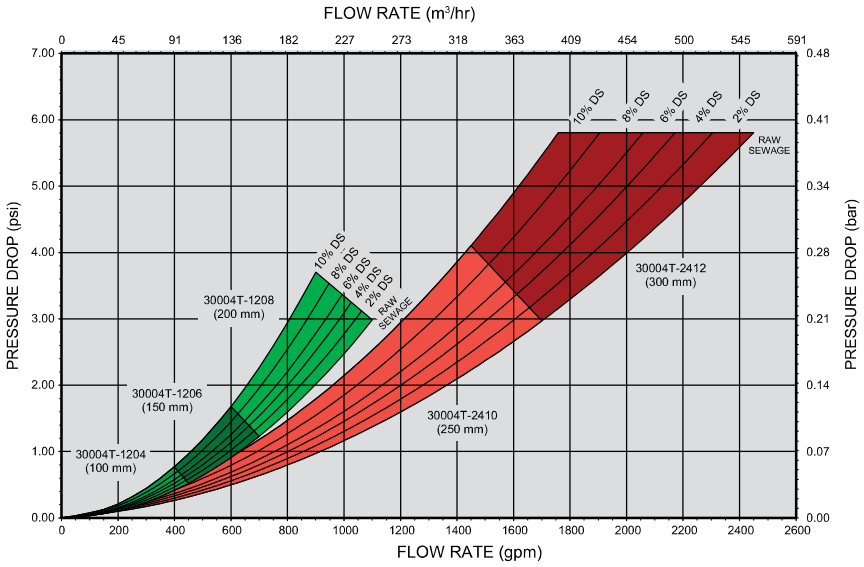
2" (50 mm) hex shafts;
Standard 3 hp (2.2 kW) motor; 29:1 reducer
Cutter Size: 4-3/4" (120 mm) diameter cutters
Seal Max Working Pressure: 90 psi (6 bar)



OPTIONS AVAILABLE

	In-line	Open-channel
5 hp (4 kW) Motor, 29:1 Reducer	■	■
7, 11 and 13-tooth Cutters	■	■
17-tooth Wipes Ready® Cutter	■	■
Monster Metal® Cutter	■	■
Custom Mounting Frames		■
SS & NEMA 7 Control Enclosures	■	■
Stainless Steel Feed Hopper		■
Alternate Voltage & HP Motors	■	■
Explosion-proof Motors	■	■
Immersible Motors	■	■
Hydraulic Power Pack	■	■
Extended Motor Shafts	■	■
ANSI, JIS, JWA, BS & AS Flanges	■	

MODEL 30004T



In-line Model	Flow Rate - gpm (m³/hr)	Pipeline Size - inches (mm)	Pressure Drop - psi (bar)	Standard Dimensions - inches (mm)				Flange Dimensions - inches (mm)			Approximate Net Weight - lbs (kg)
				A	B	C	D	E	F	G	
30004T-1204	450 (102)	4 (100)	0.52 (0.04)	60-1/8 (1527)	28-1/4 (718)	19-1/4 (483)	9-3/8 (238)	7-1/2 (191)	3/4 (19)	8	562 (255)
30004T-1206	700 (159)	6 (150)	1.23 (0.08)	60-1/8 (1527)	28-1/4 (718)	21-1/4 (540)	10-3/8 (264)	9-1/2 (241)	7/8 (22)	8	559 (254)
30004T-1208	1100 (250)	8 (200)	3.00 (0.21)	60-1/8 (1527)	28-1/4 (718)	23-1/4 (591)	11-1/4 (286)	11-3/4 (286)	7/8 (22)	8	568 (258)
30004T-2410	1700 (386)	10 (250)	2.97 (0.20)	71-5/8 (1819)	39-3/4 (1010)	27-1/4 (692)	12-5/16 (313)	14-1/4 (362)	1 (25)	12	789 (358)
30004T-2412	2450 (556)	12 (300)	5.80 (0.40)	71-5/8 (1819)	39-3/4 (1010)	31-1/4 (794)	13-1/4 (337)	17 (431)	1 (25)	12	809 (367)

In-line unit typically installed upstream of the pump. • Consult factory for analysis of application.
• Drive dimensions are a maximum based on a unit with a 3 hp (2.2 kW) drive.

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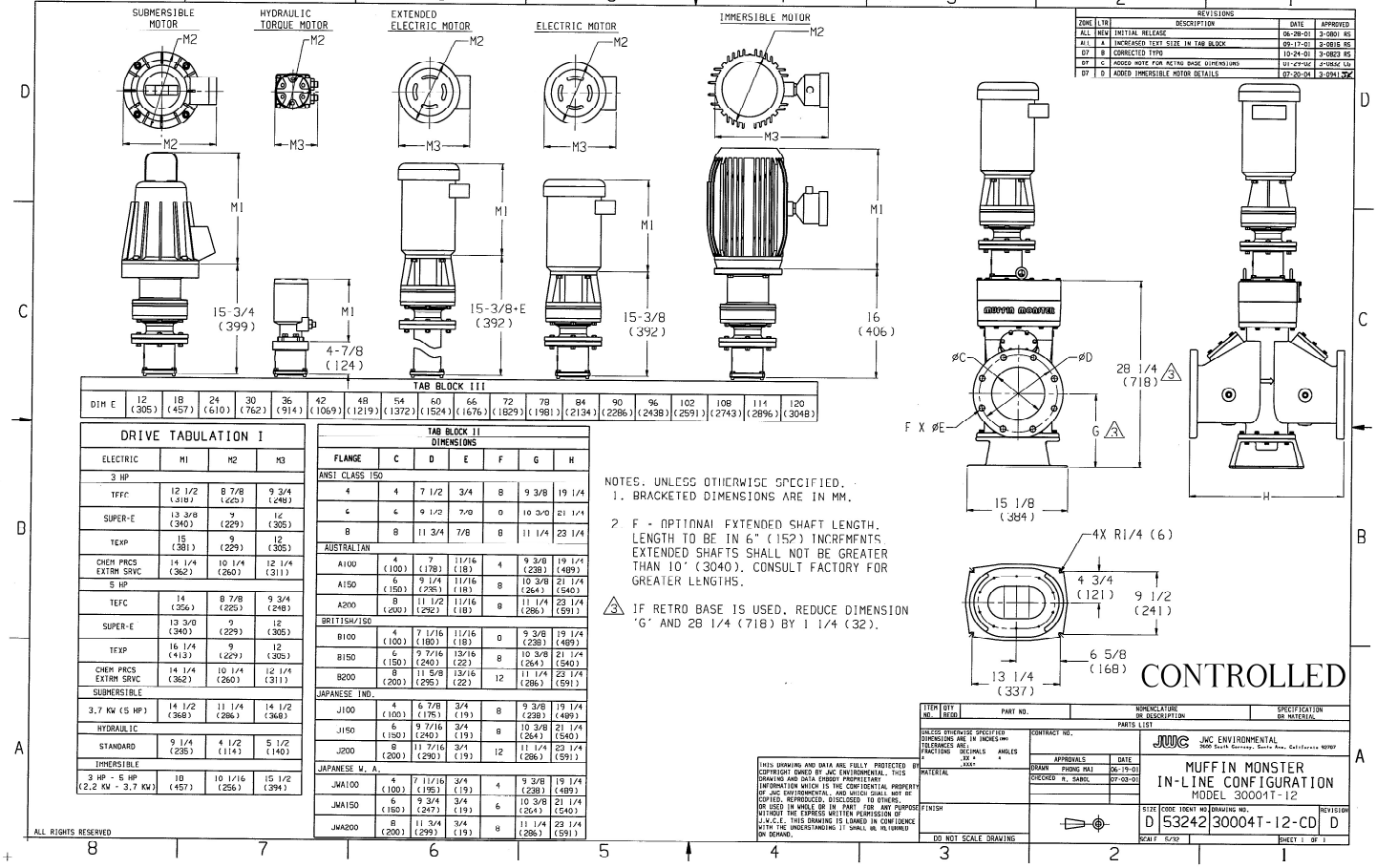

REVISIONS				
ZONE	LTR	DESCRIPTION	DATE	APPROVED
ALL	NEW	INITIAL RELEASE	06-28-01	3-0801 RS
ALL	A	INCREASED TEXT SIZE IN TAB BLOCK	09-17-01	3-0816 RS
D7	B	CORRECTED TYPO	10-24-01	3-0823 RS
D7	C	ADDED NOTE FOR RETRO BASE DIMENSIONS	01-29-02	3-0856 LG
D7	D	ADDED IMMERSIBLE MOTOR DETAILS	07-20-04	3-0941 SK

TAB BLOCK III

DIM E	12 (305)	18 (457)	24 (610)	30 (762)	36 (914)	42 (1069)	48 (1219)	54 (1372)	60 (1524)	66 (1676)	72 (1829)	78 (1981)	84 (2134)	90 (2286)	96 (2438)	102 (2591)	108 (2743)	114 (2896)	120 (3048)

DRIVE TABULATION I

ELECTRIC	M1	M2	M3
3 HP			
TFFC	12 1/2 (318)	8 7/8 (225)	9 3/4 (248)
SUPER-E	13 3/8 (340)	9 (229)	12 (305)
TEXP	15 (381)	9 (229)	12 (305)
CHEM PRCS EXTRM SRVC	14 1/4 (362)	10 1/4 (260)	12 1/4 (311)
5 HP			
TEFC	14 (356)	8 7/8 (225)	9 3/4 (248)
SUPER-E	13 3/8 (340)	9 (229)	12 (305)
TEXP	16 1/4 (413)	9 (229)	12 (305)
CHEM PRCS EXTRM SRVC	14 1/4 (362)	10 1/4 (260)	12 1/4 (311)
SUBMERSIBLE			
3.7 KW (5 HP)	14 1/2 (368)	11 1/4 (286)	14 1/2 (368)
HYDRAULIC			
STANDARD	9 1/4 (235)	4 1/2 (114)	5 1/2 (140)
IMMERSIBLE			
3 HP - 5 HP (2.2 KW - 3.7 KW)	18 (457)	10 1/16 (256)	15 1/2 (394)

TAB BLOCK II DIMENSIONS

FLANGE	C	D	E	F	G	H
ANSI CLASS 150						
4	4	7 1/2	3/4	8	9 3/8	19 1/4
6	6	9 1/2	7/8	8	10 3/8	21 1/4
8	8	11 3/4	7/8	8	11 1/4	23 1/4
AUSTRALIAN						
A100	4 (100)	7 (178)	11/16 (18)	4	9 3/8 (238)	19 1/4 (489)
A150	6 (150)	9 1/4 (235)	11/16 (18)	8	10 3/8 (264)	21 1/4 (540)
A200	8 (200)	11 1/2 (292)	11/16 (18)	8	11 1/4 (286)	23 1/4 (591)
BRITISH/ISO						
B100	4 (100)	7 1/16 (180)	11/16 (18)	8	9 3/8 (238)	19 1/4 (489)
B150	6 (150)	9 7/16 (240)	13/16 (22)	8	10 3/8 (264)	21 1/4 (540)
B200	8 (200)	11 5/8 (295)	13/16 (22)	12	11 1/4 (286)	23 1/4 (591)
JAPANESE IND.						
J100	4 (100)	6 7/8 (175)	3/4 (19)	8	9 3/8 (238)	19 1/4 (489)
J150	6 (150)	9 7/16 (240)	3/4 (19)	8	10 3/8 (264)	21 1/4 (540)
J200	8 (200)	11 7/16 (290)	3/4 (19)	12	11 1/4 (286)	23 1/4 (591)
JAPANESE W. A.						
JWA100	4 (100)	7 11/16 (195)	3/4 (19)	4	9 3/8 (238)	19 1/4 (489)
JWA150	6 (150)	9 3/4 (247)	3/4 (19)	6	10 3/8 (264)	21 1/4 (540)
JWA200	8 (200)	11 3/4 (299)	3/4 (19)	8	11 1/4 (286)	23 1/4 (591)

NOTES. UNLESS OTHERWISE SPECIFIED.
1. BRACKETED DIMENSIONS ARE IN MM.
2. F - OPTIONAL EXTENDED SHAFT LENGTH. LENGTH TO BE IN 6" (152) INCREMENTS. EXTENDED SHAFTS SHALL NOT BE GREATER THAN 10' (3040). CONSULT FACTORY FOR GREATER LENGTHS.
3. IF RETRO BASE IS USED, REDUCE DIMENSION 'G' AND 28 1/4 (718) BY 1 1/4 (32).

ITEM NO.	QTY REQD	PART NO.	NOMENCLATURE OR DESCRIPTION	SPECIFICATION OR MATERIAL
		PARTS LIST		

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES [mm] TOLERANCES ARE: FRACTIONS ± DECIMALS .XX ± .XXX ± ANGLES ±

MATERIAL

FINISH

DO NOT SCALE DRAWING

CONTRACT NO.

APPROVALS	DATE
DRAWN PHONG MAI	06-19-01
CHECKED M. SABOL	07-03-01

JWC ENVIRONMENTAL
2600 South Gateway, Santa Ana, California 92707

MUFFIN MONSTER
IN-LINE CONFIGURATION
MODEL 30004T-12

SIZE	CODE IDENT NO.	DRAWING NO.	REVISION
D	53242	30004T-12-CD	D

SCALE 1/32 SHEET 1 OF 1

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CONTROLLED

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DRAWING NO. **PC2200-001-1**

REVISION HISTORY							
REV	ZONE	DESCRIPTION	ECO NO.	DATE	DRWN	CHKD	PE
A	ALL	INITIAL RELEASE		6/8/22	TT	IF	TT

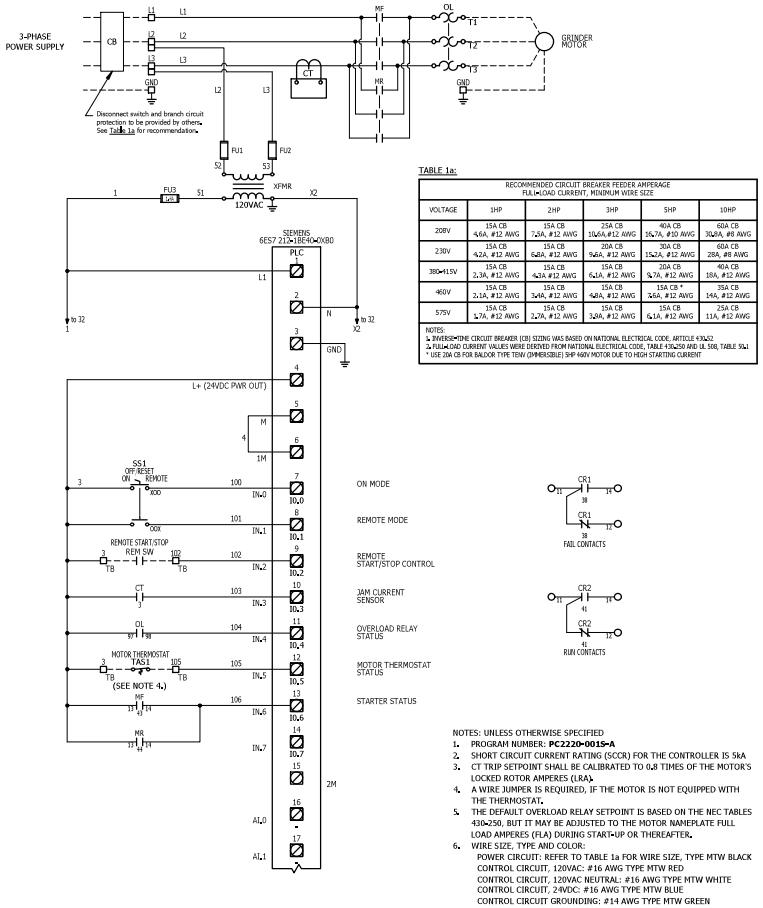
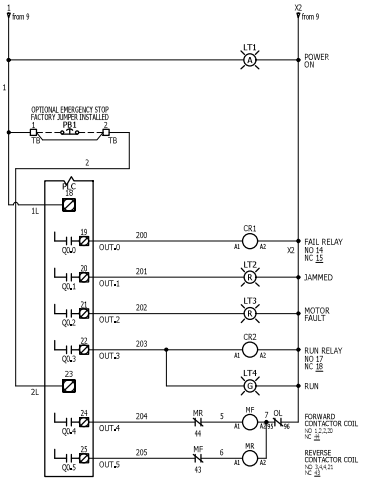


TABLE 1a:

RECOMMENDED CIRCUIT BREAKER FEEDER AMPERAGE
FULL-LOAD CURRENT, MINIMUM WIRE SIZE

VOLTAGE	1HP	2HP	3HP	5HP	10HP
208V	15A CB 4.6A, #12 AWG	15A CB 7.2A, #12 AWG	25A CB 10.6A, #12 AWG	40A CB 16.7A, #10 AWG	60A CB 30.8A, #8 AWG
230V	15A CB 4.2A, #12 AWG	15A CB 6.8A, #12 AWG	20A CB 9.6A, #12 AWG	30A CB 15.2A, #12 AWG	60A CB 28A, #8 AWG
380-415V	15A CB 2.3A, #12 AWG	15A CB 4.3A #12 AWG	15A CB 6.1A, #12 AWG	20A CB 9.7A, #12 AWG	40A CB 18A, #12 AWG
460V	15A CB 2.1A, #12 AWG	15A CB 3.4A, #12 AWG	15A CB 4.8A, #12 AWG	15A CB * 7.6A, #12 AWG	35A CB 14A, #12 AWG
575V	15A CB 1.7A, #12 AWG	15A CB 2.7A, #12 AWG	15A CB 3.8A, #12 AWG	15A CB 6.1A, #12 AWG	25A CB 11A, #12 AWG

NOTES:
1. INVERSE-TIME CIRCUIT BREAKER (CB) SIZING WAS BASED ON NATIONAL ELECTRICAL CODE, ARTICLE 430.52
2. FULL-LOAD CURRENT VALUES WERE DERIVED FROM NATIONAL ELECTRICAL CODE, TABLE 430.250 AND UL 508, TABLE SB.1
* USE 20A CB FOR BALDOR TYPE TEHV (IMMERSIBLE) 5HP 460V MOTOR DUE TO HIGH STARTING CURRENT



Control Philosophy

Power On indicator lamp
- illuminates when control power transformer is energized and fuses are good

Grinder selector switch, ON
- energize grinder motor forward contactor, Run relay & Run indicator lamp

Grinder selector switch, OFF/RESET
- de-energize grinder motor contactor, Run relay & Run indicator lamp
- clear any alarm conditions

Grinder selector switch, REMOTE
- energize grinder motor forward contactor when Remote Run Permissive input to PLC is On; energize the Run relay & Run indicator lamp

Jammed indicator lamp
- illuminates when a jam condition is set by the PLC (see Grinder Jam Clearing Sequence below)

Motor Fault indicator lamp
- illuminates when either a motor overload fault or motor over-temperature fault occurs

Fail Relay
- energized when an alarm condition is set for any of the following: (i) grinder jam; (ii) grinder motor overload, or; (iii) grinder motor overtemp

Emergency stop switch, open, (optional)
- de-energizes control power to PLC outputs that drive the motor starter and Run indicator lamp

Grinder Jam Clearing Sequence
- when the current sensor detects a jam, the motor forward contactor will be momentarily de-energized
- the motor reverse contactor will be energized for a pre-determined period of time and de-energized
- the motor forward contactor will be re-energized
- this sequence is repeated, as required, to clear the jam for a total of no more than 3 reversals in a 30-second period
- if the jam is not cleared in accordance with this sequence, an alarm condition is set
- in order to avoid nuisance trips, the inrush current is ignored for a pre-defined period when the motor is energized

NOTES: UNLESS OTHERWISE SPECIFIED
1. PROGRAM NUMBER: **PC2220-0015-A**
2. SHORT CIRCUIT CURRENT RATING (SCCR) FOR THE CONTROLLER IS 5kA
3. CT TRIP SETPOINT SHALL BE CALIBRATED TO 0.8 TIMES OF THE MOTOR'S LOCKED ROTOR AMPERES (LRA).
4. A WIRE JUMPER IS REQUIRED, IF THE MOTOR IS NOT EQUIPPED WITH THE THERMOSTAT.
5. THE DEFAULT OVERLOAD RELAY SETPOINT IS BASED ON THE NEC TABLES 430-250, BUT IT MAY BE ADJUSTED TO THE MOTOR NAMEPLATE FULL LOAD AMPERES (FLA) DURING START-UP OR THEREAFTER.
6. WIRE SIZE, TYPE AND COLOR:
   POWER CIRCUIT: REFER TO TABLE 1a FOR WIRE SIZE, TYPE MTW BLACK
   CONTROL CIRCUIT, 120VAC: #16 AWG TYPE MTW RED
   CONTROL CIRCUIT, 120VAC NEUTRAL: #16 AWG TYPE MTW WHITE
   CONTROL CIRCUIT, 24VDC: #16 AWG TYPE MTW BLUE
   CONTROL CIRCUIT GROUNDING: #14 AWG TYPE MTW GREEN
   POWER CIRCUIT GROUNDING: #12 AWG TYPE MTW GREEN

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UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES
FRACTIONS ± 1/32 | DECIMALS .XX ± .02 .XXX ± .005 | ANGLES ± 1/2°
MATERIAL
FINISH 250 (CAST) 125 (MACHINED) UNLESS OTHERWISE SPECIFIED
DO NOT SCALE DRAWING

APPROVALS	DATE
DRAWN TRAN. T.	6/8/22
CHECKED FUENTES, I.	6/8/22
PROJ ENGR TRAN. T.	6/8/22
REVISED	

CONTRACT NO.

JWC ENVIRONMENTAL
2850 S. Red Hill Ave. Suite 125, Santa Ana, CA 92705

PC2200
NEMA 4X FRP - SINGLE MOTOR
MOTOR CONTROLLER - SERIES PC2200

SIZE	DRAWING NO.	REV
D	PC2200-001-1	A

SCALE: NONE | 1 OF 3

UNCONTROLLED COPY

DRAWING NO. **PC2200-001-4**

REVISION HISTORY							
REV	ZONE	DESCRIPTION	ECO NO.	DATE	DRWN	CHKD	PE
A	ALL	INITIAL RELEASE		6/17/22	TT	IF	TT

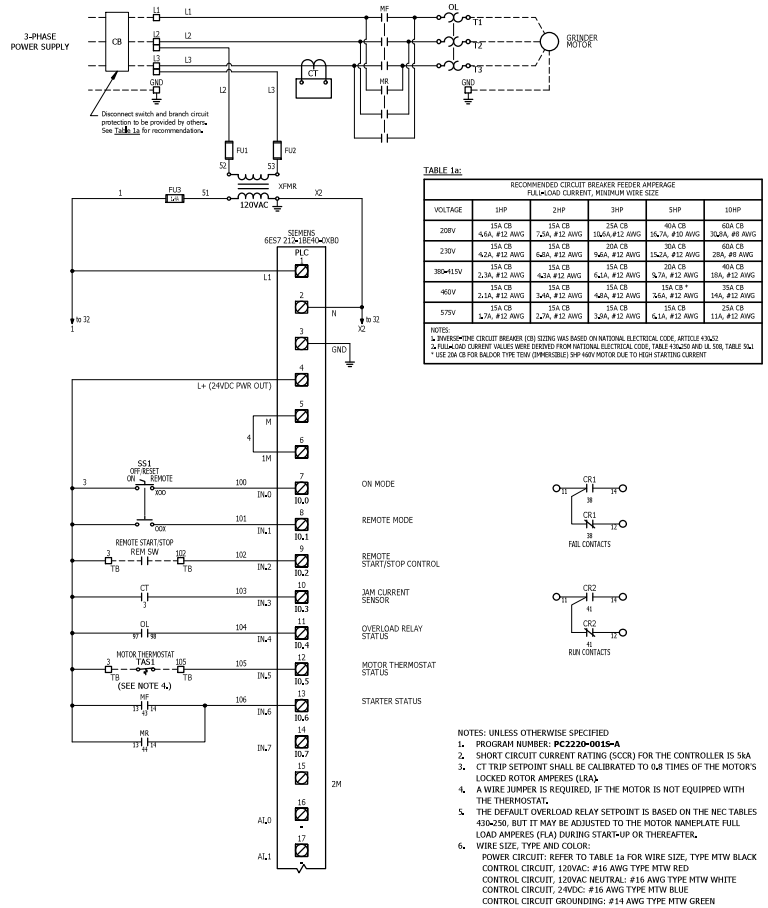

TABLE 1a:

RECOMMENDED CIRCUIT BREAKER FEEDER AMPERAGE FULL-LOAD CURRENT, MINIMUM WIRE SIZE					
VOLTAGE	1HP	2HP	3HP	5HP	10HP
208V	15A CB 6.6A, #12 AWG	15A CB 7.2A, #12 AWG	25A CB 10.6A,#12 AWG	40A CB 16.7A, #10 AWG	60A CB 30.8A, #8 AWG
230V	15A CB 6.2A, #12 AWG	15A CB 6.8A, #12 AWG	20A CB 9.6A, #12 AWG	30A CB 15.2A, #12 AWG	60A CB 28A, #8 AWG
380-415V	15A CB 2.3A, #12 AWG	15A CB 4.3A,#12 AWG	15A CB 6.1A, #12 AWG	20A CB 9.7A, #12 AWG	40A CB 18A, #12 AWG
460V	15A CB 2.1A, #12 AWG	15A CB 3.4A, #12 AWG	15A CB 4.8A, #12 AWG	15A CB * 7.6A, #12 AWG	35A CB 14A, #12 AWG
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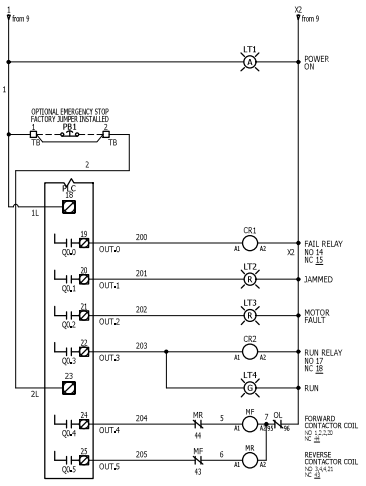
   CONTROL CIRCUIT, 24VDC: #16 AWG TYPE MTW BLUE
   CONTROL CIRCUIT GROUNDING: #14 AWG TYPE MTW GREEN
   POWER CIRCUIT GROUNDING: #12 AWG TYPE MTW GREEN



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FRACTIONS ± 1/32 | DECIMALS .XX ± .06 .XXX ± .005 | ANGLES ± 1/2°
MATERIAL
FINISH 250 (CAST) 125 (MACHINED) UNLESS OTHERWISE SPECIFIED
DO NOT SCALE DRAWING

APPROVALS	DATE
DRAWN TRAN. T.	6/17/22
CHECKED FUENTES, I.	6/17/22
PROJ ENGR TRAN. T.	6/17/22
REVISED	

CONTRACT NO.

JWC ENVIRONMENTAL
2850 S. Red Hill Ave. Suite 125, Santa Ana, CA 92705

PC2200
NEMA 4X 316 STAINLESS STEEL - SINGLE MOTOR
MOTOR CONTROLLER - SERIES PC2200

SIZE	DRAWING NO.	REV
D	PC2200-001-4	A

SCALE: NONE | 1 OF 3

UNCONTROLLED COPY

DRAWING NO. **PC2200-001-4**

TABLE 1: PARTS LIST

TB	2	E10-003-214	SCREW CENTER JUMPER - 2 POLE	AB	1492-CJJ8-2
TB	5	E10-003-210	SCREW CONNECTION TERMINAL BLOCK; 50A	AB	1492-J6
TB	2	E10-003-213	SCREW CONNECTION GROUND TERMINAL BLOCK	AB	1492-JG6
TB	4	E10-003-201	END BARRIER	AB	1492-EBJ3
TB	1	E10-003-205	SCREW CENTER JUMPER - 2 POLE	AB	1492-CJJ6-2
TB	6	E10-003-200	SCREW CONNECTION TERMINAL BLOCK; 35A	AB	1492-J4
TB	3	E10-003-207	END ANCHOR	AB	1492-EAJ35
SS1-NP	1	E13-043-095	NAMEPLATE "ON-OFF/RESET-REMOTE", FOR 22mm PILOT DEVICE	JWCE	E13-043-095
SS1	1	E08-001-410	SELECTOR SW - 3 POS MAINT, IP66 NEMA 4/4X/13	AB	800FP-SM32PX20
PLC	1	E19-013-114	SIMATIC S7-1200, CPU 1212C, COMPACT CPU, AC/DC/RLY, ONBOARD I/O: 8 DI 24V DC; 6 DO RELAY 2A; 2 AI 0 - 10V DC, POWER SUPPLY: AC 85 - 264 VAC.	SIEMENS	6ES7 212-1BE40-0XB0
LT4-NP	1	E13-043-004	NAMEPLATE "RUN", FOR 22mm PILOT DEVICE	JWCE	E13-043-004
LT4	1	E07-001-402	GREEN LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P3PN5G
LT3-NP	1	E13-043-145	NAMEPLATE "MOTOR FAULT", FOR 22mm PILOT DEVICE	JWCE	E13-043-145
LT3	1	E07-001-403	RED LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P4PN5R
LT2-NP	1	E13-043-066	NAMEPLATE "JAMMED", FOR 22mm PILOT DEVICE	JWCE	E13-043-066
LT2	1	E07-001-403	RED LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P4PN5R
LT1-NP	1	E13-043-001	NAMEPLATE "POWER ON", FOR 22mm PILOT DEVICE	JWCE	E13-043-001
LT1	1	E07-001-404	AMBER LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P0PN5A
FU3	2	E06-130-0140	GENERAL PURPOSE FUSE / MIDGET, 1.4A 250V TIME DELAY	FERRAZ SHAWMUT	TRM1-4/10
END_CLIP	4	E05-022-002	DIN RAIL END CLIP	IDEC	BNL-5
ENCL-PNL	1	E01-050-002	17"x13" BACK PANEL FOR NEMA ENCL 20"x16"	HOFFMAN	A20P16
ENCL	1	E01-4X6-201608	316 STAINLESS STEEL TYPE 4X ENCLOSURE 20"x16"x8"	HOFFMAN	A20H1608SS6LP
CT	1	E04-007-001	CURRENT SENSING SWITCH, 0-135 AMP INPUT, 30V MAX. SOLID-STATE OUTPUT	VERIS	H-701
CR1, CR2	2	E05-004-015	RELAY, 6mm RV8H SERIES, 6A SPDT 120V COIL, LED	IDEC	RV8H-L-AD110
TAG	QTY	JWC PART NUMBER	DESCRIPTION	MFG	CATALOG

NOTE:
ONE SET OF SPARE FUSES ARE INCLUDED IN QUANTITIES.

TABLE 2: BRANCH CIRCUIT COMPONENT SELECTION

VOLTAGE	TAG	MOTOR HORSE POWER (HP)				
		1HP	2HP	3HP	5HP	10HP
208V	XFMR	E03-001-013	E03-001-013	E03-001-013	E03-001-013	E03-001-013
	FU1-FU2	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-103
	OL	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-243A	E02-020-245A
230V	XFMR	E03-001-010	E03-001-010	E03-001-010	E03-001-010	E03-001-010
	FU1-FU2	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-103
	OL	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-243A	E02-020-245A
380-415V	XFMR	E03-001-009	E03-001-009	E03-001-009	E03-001-009	E03-001-009
	FU1-FU2	E06-110-0075	E06-110-0075	E06-110-0075	E06-110-0075	E06-110-0075
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-101
	OL	E02-020-241A	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-242A
460V	XFMR	E03-001-010	E03-001-010	E03-001-010	E03-001-010	E03-001-010
	FU1-FU2	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-101
	OL	E02-020-241A	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-242A
575V	XFMR	E03-001-027	E03-001-027	E03-001-027	E03-001-027	E03-001-027
	FU1-FU2	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-101
	OL	E02-020-241A	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-242A

TABLE 3: PARTS LIST SUPPLEMENT TO TABLE 2

F1-F2	4	E06-110-0100	FUSE, 1.0A, 600V TIME DELAY CLASS CC	FERRAZ SHAWMUT	ATQR1
F1-F2	4	E06-110-0075	FUSE, .75A,600V TIME DELAY CLASS CC	FERRAZ SHAWMUT	ATQR3/4
F1-F2	4	E06-110-0050	FUSE, .5A,600V TIME DELAY CLASS CC	FERRAZ SHAWMUT	ATQR1/2
XFMR	1	E03-001-027	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 600:120	AB	1497-G-CXSX-3-N
XFMR	1	E03-001-013	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 208:120	AB	1497-G-HXDX-3-N
XFMR	1	E03-001-010	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 240/480:120	AB	1497-G-BASX-3-N
XFMR	1	E03-001-009	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 380/400/415:230/115	AB	1497-G-M4-3-N
OL	1	E02-020-245A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 9.0-45 AMPS	AB	193-1EFFD
OL	1	E02-020-243A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 5.4-27 AMPS	AB	193-1EFEB
OL	1	E02-020-242A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 3.2-16 AMPS	AB	193-1EFDB
OL	1	E02-020-241A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 1.0-5.0 AMPS	AB	193-1EFCB
MF/MR	1	E02-020-101	IEC CONTACTOR, AC REVERSING, 23 AMPS	AB	104-C23D22
MF/MR	1	E02-020-103	IEC CONTACTOR, AC REVERSING, 37 AMPS	AB	104-C37D22
TAG	QTY	JWC PART NUMBER	DESCRIPTION	MFG	CATALOG

JWC ENVIRONMENTAL
2850 S. Red Hill Ave. Suite 125, Santa Ana, CA 92705

PC2200
NEMA 4X 316 STAINLESS STEEL - SINGLE MOTOR MOTOR CONTROLLER - SERIES PC2200

SIZE	DRAWING NO.	REV
D	PC2200-001-4	A

SCALE: NONE | 2 OF 3

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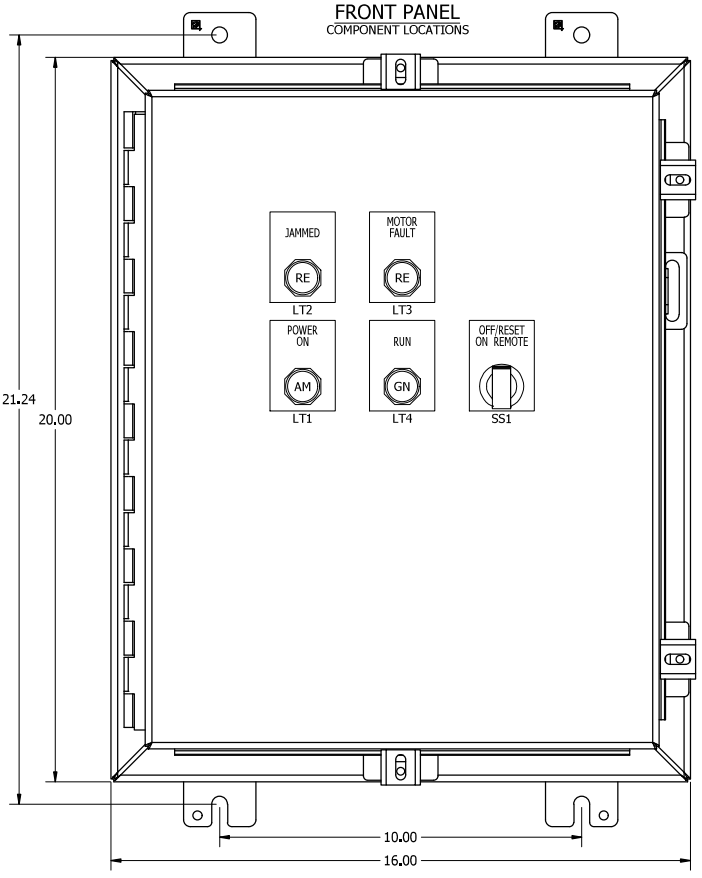
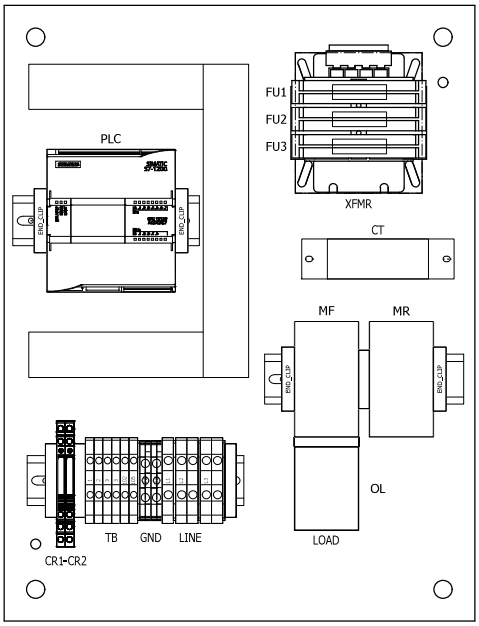
DRAWING NO. **PC2200-001-4**

FRONT PANEL
COMPONENT LOCATIONS



BACK PANEL
COMPONENT LOCATIONS



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SIZE	DRAWING NO.	REV
D	PC2200-001-4	A

SCALE: NONE — 3 OF 3

UNCONTROLLED COPY

DRAWING NO. **PC2200-001-1**

TABLE 1: PARTS LIST

TB	2	E10-003-214	SCREW CENTER JUMPER - 2 POLE	AB	1492-CJJ8-2
TB	5	E10-003-210	SCREW CONNECTION TERMINAL BLOCK; 50A	AB	1492-J6
TB	2	E10-003-213	SCREW CONNECTION GROUND TERMINAL BLOCK	AB	1492-JG6
TB	4	E10-003-201	END BARRIER	AB	1492-EBJ3
TB	1	E10-003-205	SCREW CENTER JUMPER - 2 POLE	AB	1492-CJJ6-2
TB	6	E10-003-200	SCREW CONNECTION TERMINAL BLOCK; 35A	AB	1492-J4
TB	3	E10-003-207	END ANCHOR	AB	1492-EAJ35
SS1-NP	1	E13-043-095	NAMEPLATE "ON-OFF/RESET-REMOTE", FOR 22mm PILOT DEVICE	JWCE	E13-043-095
SS1	1	E08-001-410	SELECTOR SW - 3 POS MAINT, IP66 NEMA 4/4X/13	AB	800FP-SM32PX20
PLC	1	E19-013-114	SIMATIC S7-1200, CPU 1212C, COMPACT CPU, AC/DC/RLY, ONBOARD I/O: 8 DI 24V DC; 6 DO RELAY 2A; 2 AI 0 - 10V DC, POWER SUPPLY: AC 85 - 264 VAC.	SIEMENS	6ES7 212-1BE40-0XB0
LT4-NP	1	E13-043-004	NAMEPLATE "RUN", FOR 22mm PILOT DEVICE	JWCE	E13-043-004
LT4	1	E07-001-402	GREEN LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P3PN5G
LT3-NP	1	E13-043-145	NAMEPLATE "MOTOR FAULT", FOR 22mm PILOT DEVICE	JWCE	E13-043-145
LT3	1	E07-001-403	RED LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P4PN5R
LT2-NP	1	E13-043-066	NAMEPLATE "JAMMED", FOR 22mm PILOT DEVICE	JWCE	E13-043-066
LT2	1	E07-001-403	RED LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P4PN5R
LT1-NP	1	E13-043-001	NAMEPLATE "POWER ON", FOR 22mm PILOT DEVICE	JWCE	E13-043-001
LT1	1	E07-001-404	AMBER LED PILOT LIGHT, IP66 NEMA 4/4X/13	AB	800FP-P0PN5A
FU3	2	E06-130-0140	GENERAL PURPOSE FUSE / MIDGET, 1.4A 250V TIME DELAY	FERRAZ SHAWMUT	TRM1-4/10
END_CLIP	4	E05-022-002	DIN RAIL END CLIP	IDEC	BNL-5
ENCL-PNL	1	E01-044-002V	16"x14" BACK PANEL FOR DIAMOND SERIES ENCL.	STAHLIN	BP1614AL
		E01-028-014	MOUNTING FEET FOR DIAMOND SERIES ENCL.	STAHLIN	DSMGFTKIT
ENCL	1	E01-028-010	ENCL NEMA 4X FIBERGLASS 16X14X8 CUSTOM, HINGED OPAQUE COVER WITH STAINLESS STEEL PULL LATCHES	STAHLIN	DS161408HPL
CT	1	E04-007-001	CURRENT SENSING SWITCH, 0-135 AMP INPUT, 30V MAX. SOLID-STATE OUTPUT	VERIS	H-701
CR1, CR2	2	E05-004-015	RELAY, 6mm RV8H SERIES, 6A SPDT 120V COIL, LED	IDEC	RV8H-L-AD110
TAG	QTY	JWC PART NUMBER	DESCRIPTION	MFG	CATALOG

NOTE:
ONE SET OF SPARE FUSES ARE INCLUDED IN QUANTITIES.

TABLE 2: BRANCH CIRCUIT COMPONENT SELECTION

VOLTAGE	TAG	MOTOR HORSE POWER (HP)				
		1HP	2HP	3HP	5HP	10HP
208V	XFMR	E03-001-013	E03-001-013	E03-001-013	E03-001-013	E03-001-013
	FU1-FU2	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-103
	OL	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-243A	E02-020-245A
230V	XFMR	E03-001-010	E03-001-010	E03-001-010	E03-001-010	E03-001-010
	FU1-FU2	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100	E06-110-0100
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-103
	OL	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-243A	E02-020-245A
380-415V	XFMR	E03-001-009	E03-001-009	E03-001-009	E03-001-009	E03-001-009
	FU1-FU2	E06-110-0075	E06-110-0075	E06-110-0075	E06-110-0075	E06-110-0075
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-101
	OL	E02-020-241A	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-242A
460V	XFMR	E03-001-010	E03-001-010	E03-001-010	E03-001-010	E03-001-010
	FU1-FU2	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-101
	OL	E02-020-241A	E02-020-241A	E02-020-242A	E02-020-242A	E02-020-242A
575V	XFMR	E03-001-027	E03-001-027	E03-001-027	E03-001-027	E03-001-027
	FU1-FU2	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050	E06-110-0050
	MF/MR	E02-020-101	E02-020-101	E02-020-101	E02-020-101	E02-020-101
	OL	E02-020-241A	E02-020-241A	E02-020-241A	E02-020-242A	E02-020-242A

TABLE 3: PARTS LIST SUPPLEMENT TO TABLE 2

F1-F2	4	E06-110-0100	FUSE, 1.0A, 600V TIME DELAY CLASS CC	FERRAZ SHAWMUT	ATQR1
F1-F2	4	E06-110-0075	FUSE, .75A,600V TIME DELAY CLASS CC	FERRAZ SHAWMUT	ATQR3/4
F1-F2	4	E06-110-0050	FUSE, .5A,600V TIME DELAY CLASS CC	FERRAZ SHAWMUT	ATQR1/2
XFMR	1	E03-001-027	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 600:120	AB	1497-G-CXSX-3-N
XFMR	1	E03-001-013	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 208:120	AB	1497-G-HXDX-3-N
XFMR	1	E03-001-010	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 240/480:120	AB	1497-G-BASX-3-N
XFMR	1	E03-001-009	CONTROL CIRCUIT TRANSFORMER, TYPE 1497, 130VA, 380/400/415:230/115	AB	1497-G-M4-3-N
OL	1	E02-020-245A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 9.0-45 AMPS	AB	193-1EFFD
OL	1	E02-020-243A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 5.4-27 AMPS	AB	193-1EFEB
OL	1	E02-020-242A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 3.2-16 AMPS	AB	193-1EFDB
OL	1	E02-020-241A	IEC E1 PLUS SOLID-STATE OVERLOAD RELAY, 3-PHASE, SCREW TYPE CONTROL TERMINALS, 1.0-5.0 AMPS	AB	193-1EFCB
MF/MR	1	E02-020-101	IEC CONTACTOR, AC REVERSING, 23 AMPS	AB	104-C23D22
MF/MR	1	E02-020-103	IEC CONTACTOR, AC REVERSING, 37 AMPS	AB	104-C37D22
TAG	QTY	JWC PART NUMBER	DESCRIPTION	MFG	CATALOG

JWC ENVIRONMENTAL
2850 S. Red Hill Ave. Suite 125, Santa Ana, CA 92705

PC2200
NEMA 4X FRP - SINGLE MOTOR
MOTOR CONTROLLER - SERIES PC2200

SIZE	DRAWING NO.	REV
D	PC2200-001-1	A

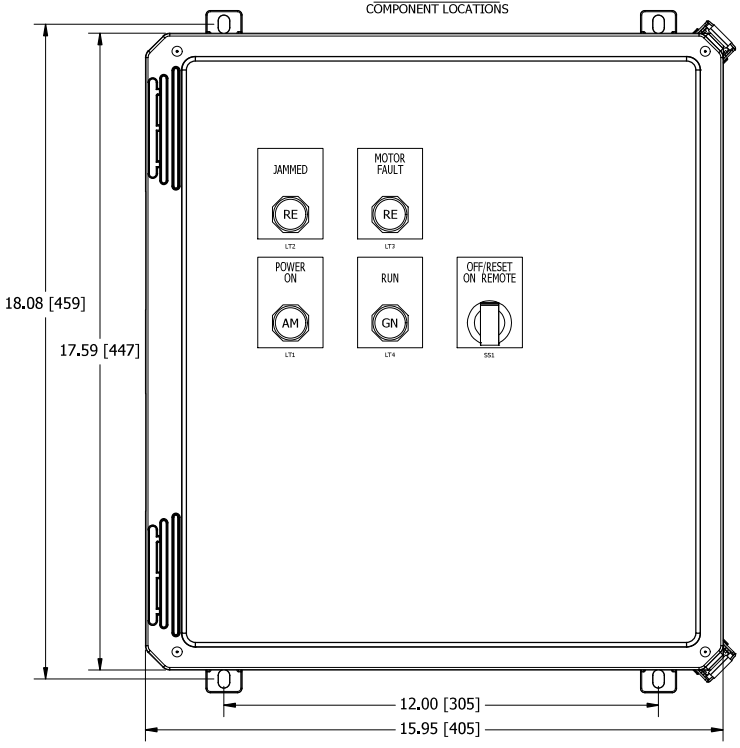
SCALE: NONE 2 OF 3

ALL RIGHTS RESERVED

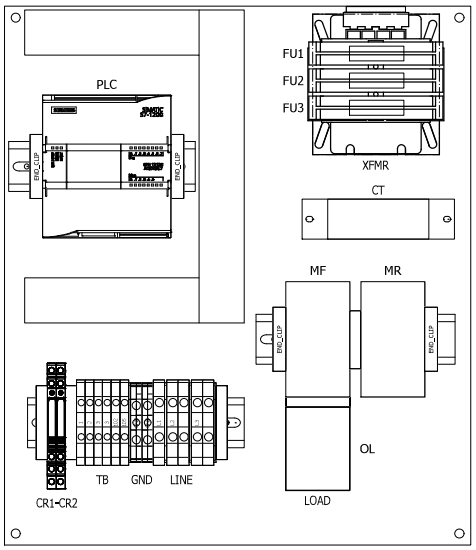
UNCONTROLLED COPY

DRAWING NO. **PC2200-001-1**

FRONT PANEL
COMPONENT LOCATIONS



BACK PANEL
COMPONENT LOCATIONS



JWC ENVIRONMENTAL
2850 S. Red Hill Ave. Suite 125, Santa Ana, CA 92705

PC2200
NEMA 4X FRP - SINGLE MOTOR
MOTOR CONTROLLER - SERIES PC2200

SIZE	DRAWING NO.	REV
D	PC2200-001-1	A

SCALE: NONE — 3 OF 3

ALL RIGHTS RESERVED

SOLE_SOURCE_determinatin request form Misco Water NEW FORM 12.24.24 updated

Final Audit Report 2025-01-07

Created:	2025-01-03
By:	Kristy Miera (kamiera@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAdey8qxpgzJ1ldpD2EQFkfblxK2R7xjBe

"SOLE_SOURCE_determinatin request form Misco Water NEW FORM 12.24.24 updated" History

Document created by Kristy Miera (kamiera@santafenm.gov)
2025-01-03 - 11:42:32 PM GMT- IP address: 63.232.20.2

Document emailed to Jesse Roach (jdroach@santafenm.gov) for signature
2025-01-03 - 11:47:38 PM GMT

Email viewed by Jesse Roach (jdroach@santafenm.gov)
2025-01-07 - 7:57:58 PM GMT- IP address: 63.232.20.2

Document e-signed by Jesse Roach (jdroach@santafenm.gov)
Signature Date: 2025-01-07 - 7:58:13 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature
2025-01-07 - 7:58:15 PM GMT

Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2025-01-07 - 8:12:27 PM GMT- IP address: 174.218.17.167

Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2025-01-07 - 8:13:24 PM GMT - Time Source: server- IP address: 174.218.17.167

Agreement completed.
2025-01-07 - 8:13:24 PM GMT

Powered by Adobe Acrobat Sign

MIERA, KRISTY A.

From: GSD.SPDInfo@state.nm.us
Sent: Saturday, February 8, 2025 12:01 AM
To: MIERA, KRISTY A.
Subject: Sole Source #50-M0087-25-CP010 - 30 Days

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

Your Sole Source #**50-M0087-25-CP010** notice of intent to award has been posted for 30 days **without protest**.

The status has been changed from "Pending" to "No Protest."

Passing the 30-day posting period does ***not*** mean your contractor can begin work. It ***only*** means the procurement method has been approved.

GSD/SPD State Purchasing Division

GSD.SPDInfo@state.nm.us

$ASSIGNEDNAME$

$ASSIGNEDEMAIL$

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

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

DEPARTMENT / DIVISION NAME	DATE
Public Utilities/Wastewater	8/28/2024

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
WW Enterpise Fund/WIP Construction	5000375	572970	WWM245002	$ 249,984	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
				$ 249,984	$ -

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

To increase 5000375/572970 WIP CONSTRUCTION from cash for continued rental of the Aeratros for the emergency at WW

Please NOTE on posting NEWTERRA :)

please review memo for details

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
500	(249,984)
TOTAL:	(249,984)

Linda MacAllister — 2/14/2025
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 #:

Andy Hopkins — 03/06/2025
Budget Officer — Date

Division Director Signature *{optional}* — Date

Jesse Roach — Mar 3, 2025
Department Director Signature — Date

Finance Director *{≤ $5,000}* — Date

City Manager *{≤ $60,000}* — Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 1/3/2025

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
Digital Insurance LLC - Clayton, MO
8235 Forsyth Blvd #1200
Clayton MO 63105

License#: 8012081

CONTACT NAME: Charita Mesger
PHONE (A/C, No, Ext): 314-746-4700 **FAX (A/C, No):** 314-889-3700
E-MAIL ADDRESS: charita.mesger@onedigital.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Gemini Insurance Company	10833
INSURER B : Great American E&s Ins Co	37532
INSURER C : Tokio Marine Speciality Ins Co	23850
INSURER D : National Fire Ins Co Of Hartford	20478
INSURER E : Transportation Insurance Co	20494
INSURER F :	

INSURED
Newterra Corporation, Inc.
Newterra Holdings, LLC
1555 Coraopolis Heights Rd.
Coraopolis PA 15108

NEWTCOR-01

COVERAGES **CERTIFICATE NUMBER:** 585252937 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:			VMGP005669	12/31/2024	12/31/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Employee Benefits	$ 1,000,000 $ 50,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 1,000,000
D	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [X] SCHEDULED AUTOS X HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY X Comp: $1,000 [X] Coll: $1,000			6072879306	12/31/2024	12/31/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
B	[ ] **UMBRELLA LIAB** [X] OCCUR X **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			XSE65888404	12/31/2024	12/31/2025	EACH OCCURRENCE AGGREGATE 	$ 8,000,000 $ 8,000,000 $
E E	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		6072879192 6079543872	12/31/2024 12/31/2024	12/31/2025 12/31/2025	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
C C	Contractor Pollution & Professional Liability			PPK2640691 PPK2640916	12/31/2024 12/31/2024	12/31/2025 12/31/2025	Claim/Agg Claim/Agg	2,000,000 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liability, and Automobile Liability, include Blanket Additional Insureds where such status is required by a written contract. The General Liability, Automobile Liability, Umbrella Liability, Pollution Liability and Workers' Compensation policies include Blanket Waivers of Subrogation which provide this status when required by a written contract. Waiver of Subrogation for Umbrella Liability, applies in favor of Additional Insured/Certificate Holder per policy terms and conditions 30 day notice of cancellation in favor of the First Named Insured.

Policies are Primary and Non-Contributory. Umbrella policy follows the form of underlying policies in favor of the certificate holder.
City of Santa Fe is included as Additional Insured(s)on all policies including Contractors Pollution Liability as required by written contract.

CERTIFICATE HOLDER

City of Santa Fe
200 Lincoln Ave
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

Michael F Sheridan Jr

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Signature: LeRoy Alvarado
LeRoy Alvarado (Feb 27, 2025 13:38 MST)

Email: lmalvarado@santafenm.gov

CITY OF SANTA FE

Memorandum

Date: January 21, 2025

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

From: Peter Franklin, Modrall Sperling, as Bond Counsel the City

Via: Emily Oster, Finance Director EKO

RE: Clarifying Structure of NMED for Public Utilities Department

---

EXECUTIVE SUMMARY:

This bill amends Ordinance No. 2024-6, adopted by the Governing Body on August 14, 2024, which authorized the City of Santa Fe ("City") to enter into a loan agreement with the New Mexico Environment Department ("NMED") to obtain project loan funds in the amount of one hundred and fifty-one million dollars and zero cents ($151,000,000.00) plus accrued interest. The purpose of the amendment is to authorize, in place of the single combined $151,000,000 loan agreement, three separate loan agreements. The three separate loan agreements include:

(1) a Wastewater Utility System Loan Agreement in the principal amount of $114,000,000, to be repaid from pledged Net Wastewater System revenue;

(2) a Water Utility System Loan Agreement in the principal amount of $17,000,000, to be repaid from pledged Net Water System revenue; and

(3) an Environmental Services Division Loan Agreement in the principal amount of $20,000,000, to be repaid from Net Environmental Services Division revenue.

The agreement described in Ordinance No. 2024-6 applies funding to three separate utility systems with a single loan. This bill replaces the current structure of a single loan agreement with three individual loan agreements, each of which will be applied to a single utility system, as described above. Each loan agreement will include the covenants and provisions applicable to the utility system being improved with the proceeds of the corresponding loan, which the City agreed to impose in connection with its outstanding Wastewater Utility System revenue bonds, Water Utility System revenue bonds, and Solid Waste Utility System debt obligations. The 0.01% interest rate, 30-year term, and all other material terms of the original combined $151,000,000 loan agreement, offered by NMED, and approved in Ordinance No. 2024-6, will apply to each separate loan.

BACKGROUND:

The City owns, operates, and maintains public utilities including a water utility system, a wastewater utility system, and solid waste collection system services performed by the Environmental Services Division. The current systems are inadequate to meet the needs of the City.

The projects in the three loan agreements include the following:

1. A Water Utility System Improvement project
   - CWSRF 140-),-the Nichols Dam Outlet Works Rehabilitation project, to plan, design, and construct the reconfiguration of the dam outlet, conduit joints, line conduit, and construction filter as well as dam embankment drainage improvements.

2. Wastewater Utility System projects, including:
   - CWSRF 140-C, the Ultraviolet (UV") Disinfection project, to plan, design, construct, and replace the UV disinfection system and equipment.
   - CWSRF 140-D, the Wastewater ("WW") Collections Equipment and Administration project to plan, design, and construct the relocation of the collections division sites (staff and equipment) to minimize response time, expense, and potential surface water contamination.
   - CWSRF 140-E, the Sewer Line Repair/Rehabilitation project to plan, design, and construct sewer line rehabilitation, including use of trenchless rehabilitation techniques, in the City.
   - CWSRF 140-F, the Wastewater Treatment Plan Repair and Rehabilitation project to rehabilitate, repair, and for the replacement of the wastewater treatment plant.

3. Environmental Services Division / Solid Waste Collection System project:

CWSRF 140-B, the Environmental Service Division ("ESD") project, to plan, design, and construct an administrative space, maintenance space, and storage area for the ESD, that will accommodate solid waste and curbside recycling collection vehicles and that will reduce or prevent industrial contamination due to storm water runoff.

ATTACHMENTS:

- Bill
- Fiscal Impact Report (FIR)
- Memo Attachment - Interim Wastewater Utility Loan Agreement, Supplement and Note
- Memo Attachment - Interim Water Utility Loan Agreement, Supplement and Note
- Memo Attachment - Interim Environmental Services Division Loan Agreement, Supplement and Note

Clean Water State Revolving Loan Fund Interim Loan Agreement

City of Santa Fe

$20,000,000 Environmental Services Division Loan Agreement

(Made pursuant to Funding Package consisting of $151,000,000 total Loan at 0.01%

The following items are included as part of the funding agreement:

- **Financial Pages and NMED Project Conditions, General Conditions, and Covenants**
- **Covenants and Provisions Applicable to Net Environmental Services Division System Revenue Debt Obligations (Attachment 1)**
- **CWSRF Federal Requirements:**

Applies to All Projects:

- **Super Crosscutters**
- **Generally Accepted Government Accounting Practices**
- **Useful Life**
- **Office of the Inspector General Poster**
- **Cost and Effectiveness**

Applies only to Treatment Works Projects (UV Disinfection and Sewer Line Repair):

- **American Iron and Steel**
- **State Environmental Review Process**
- **Davis-Bacon Wage Rates**
- **Fiscal Sustainability Plan**

NEW MEXICO
ENVIRONMENT DEPARTMENT

INTERIM LOAN AGREEMENT
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF) –also known as-
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM

Loan Number: CWSRF 140 A-F

Name of Borrower: **City of Santa Fe**

$20,000,000 Environmental Services Division Loan Agreement (made as part of total CWSRF Loan package of $151,000,000, Interest Rate: 0.01%

This Interim Loan Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and the City of Santa Fe (Borrower) becomes effective on the date signed by the NMED. Borrower has enacted Ordinance No. 2024-6 approved on August 14, 2024 (as amended by Ordinance No. 2025-___ approved on _____, 2025), hereinafter referred to as (the "Ordinance") which authorizes execution of this Agreement, authorizes the Borrower to accept loan funds from NMED, and irrevocably pledges the Environmental Services Funds (Pledged Funds) for the repayment of the loan.

Listed below are agency contacts.

Borrower's Name and Address: City of Santa Fe 200 Lincoln Avenue PO Box 909 Santa Fe, New Mexico 87504-0909	**NMED:** New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, New Mexico 87505 NMENV-cpbinfo@state.nm.us
Borrower's Contact Information: _____, Public Utilities Director (505) 955-4650	**NMED Contact Information:** Stephanie DuBois, Project Engineer (505) 538-5539, stephanie.dubois@env.nm.gov Maria Molina, Program Administrator (505) 670-3876, maria.molina2@env.nm.gov

Jonna Leigh Stack, Project Administrator 505-955-4206 jlstack@santafenm.gov	Rhonda Holderman, Financial Manager, Loans and Grants (505) 363-9396, Rhonda.holderman@env.nm.gov
Emily K. Oster, Finance Director	
(505) 955-6171	
5ekoster@santafenm.gov	

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Borrower's Loan Ordinance
Interim Promissory Note
Proposed Loan Amortization Schedule
Project Description Form

I. Project Description:

A. Projects under this agreement include:

- Solid Waste Collections Division Equipment and Administration Building
- Environmental Services Division Maintenance and Administrative Building.

B. Borrower agrees that it will implement, in all respects, the project outlined in the attached Project Description, and made a part of this Agreement.

C. Borrower agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended loan agreement.

II. Loan Amount:

NMED agrees to loan funds to the Borrower to pay for approved costs to plan, acquire and construct the Project, in an amount not to exceed: $20,000,000_____(Environmental Services Division Loan Amount) at the **interest rate of 0.01% annually** upon the terms and conditions set forth in this Agreement and the Interim Promissory Note.

Provided the Borrower complies with the Construction Conditions and the CWSRF Requirements below, the loan amount will be available for a period of three **(3) years** from the date of this Agreement. Subject to completion of the Project within the three (3) year construction period, Borrower shall determine the construction schedule for the project in its reasonable discretion.

III. Funding:

A. Project interest accrues during construction at **0.01%** annually from thedate of each disbursement from NMED to the Borrower up to the date the final

disbursement request is approved by NMED. The interest accrued during construction, if applicable, shall be payable as follows:

1. Project Interest shall be due and payable in one lump sum within two weeks of receiving notice of final loan amount from the NMED, or

2. Project Interest shall be added to the loan amount disbursed and shall become part of the principal due during the term of the Final Promissory Note.

B. FINANCE COSTS

Finance costs, if applicable, will be determined upon the issuance of the Final Loan Agreement and will be based on the final amount loaned, accrued project interest and agreed upon repayment terms.

C. REPAYMENT TERMS

Repayment terms will be determined upon issuance of the Final Loan Agreement. Any loan term must be substantiated by the Borrower, and the loan term shall not exceed the average economic life of the project as a whole. Repayment will begin not less than one year after project completion. Repayment need not be based on level payments of principal and interest, but may instead be structured to address Borrower's needs with respect to cash flow, anticipated utility rate increases, and other relevant factors, in Borrower's discretion; provided, that structured repayments shall not be interest-only, but shall include annual amortization of a portion of unpaid principal and payment of interest.

The Borrower may pay off ("Prepay") all or any part of the loan at any time following delivery of written notice to NMED of Borrower's election to Prepay, specifying the principal amount to be prepaid, together with interest thereon accrued to the date of prepayment.

D. ACTUAL LOAN AMOUNT DISBURSED

(i) If the loan amount disbursed is less than the amount in Section III. Loan Amount, then the Final Loan Agreement and the Final Promissory Note shall reflect actual loan disbursements. If the Borrower does not pay the Project Interest within two weeks of receiving notice of final loan amount from the NMED, then the accrued Project Interest shall be incorporated into the principal amount in the Final Promissory Note.

(ii) At the Borrower's request, NMED will reallocate unused loan amounts for other eligible projects of the Borrower, and will either amend an existing loan agreement and note ("Loan Documentation") or enter into new Loan Documentation with Borrower reflecting the reallocation of unused proceeds for other eligible purposes. Borrower shall be responsible for determining that funds pledged for repayment in connection with such Loan Documentation is from an appropriate source.

(iii) Within the State and Federal requirements applicable to the Loan Agreement, NMED intends to utilize amounts repaid by Borrower hereunder to provide additional loans to Borrower for eligible purposes, at Borrower's request.

E. SECURITY – PLEDGED FUNDS

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as Net Revenues of the Environmental Services Division owned and operated by the City of Santa Fe, as more specifically defined in the Covenants and Provisions Applicable to Net Solid Waste Collection System Revenue Debt Obligations attached hereto as Attachment 1 ("Attachment 1"), which are hereby incorporated in this Agreement.

Except as stated in Attachment 1, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

F. DEFAULT AND LATE CHARGES

Failure by the Borrower to pay the annual payments as set forth in the Final Loan Agreement and Final Promissory Note shall constitute an event of default. Late charges may be assessed at the discretion of NMED. See VI. COVENANTS, Sections H and I for default procedures.

G. DEMAND FEATURE

This Agreement has a demand feature in the event of default and the total principal and interest due shall be paid on demand. See VI. COVENANTS Sections H and I for default procedures.

H. NO DEBT SERVICE RESERVE FUND OR MATCHING REQUIREMENTS.

Borrower shall not be required to establish a debt service reserve fund or to provide matching funds pursuant to this Agreement. In lieu of debt service reserve fund requirements, Borrower shall comply with the Rate Covenant herein. See VI, COVENANTS Section E.

IV. Project Conditions:

A. After the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Borrower's attorney shall provide an opinion satisfactory to NMED that the Borrower is an incorporated entity.

B. Upon execution of this Agreement, the Borrower shall follow the procedures listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Borrower.

1. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Borrower is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB email ptab@acecnm.org.)

2. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Borrower's staff will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Borrower's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on thewebsite at

https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/.

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.

4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.

5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.

6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.

7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.

8. NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans.

9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.

10. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61- 33-1 et seq.

11. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights- of-way necessary for the completion of work under this agreement.

12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance/Resolution and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

13. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. The Project will not be considered complete until the work as defined in this Agreement has been fully performed, and finally and unconditionally accepted by the Borrower and NMED.

14. If the Funds are to be used for construction, final disbursement will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

    a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.

    b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower.

    c) A certificate of substantial completion including punch list items.

    d) A letter certifying project acceptance by the Borrower and the Borrower's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval.

    e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met.

    f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.

    g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, contractor(s) may furnish receipts or releases in full an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Borrower or its property might in any way be responsible,

    have been paid or otherwise satisfied.

h) A written consent of the surety, if any, to final payment; and

i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.

j) Verification to NMED of FSP and written certification that a FSP is in place.

15. The Borrower must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

16. The Borrower shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.

17. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Borrower shall not proceed with construction of the Project until NMED has approved the Contract Documents.

18. Any change order to the Project construction contract which results in a change to the Project's contract amount, scope of work, or schedule must be approved by NMED.

19. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.

20. The Borrower must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Borrower must certify in writing that this has been done prior to the award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by theBorrower's attorney is required.

21. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.

22. The Borrower shall achieve Project Completion by the end of the loan agreement term. Project Completion means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

23. If the Borrower is unable to complete the project by the loan termination date, the Borrower must notify NMED at least 30 days prior to the loan termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Borrower shall refund any Funds disbursed to the Borrower by NMED within ninety (90) days of termination.

V. General Conditions:

A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations,
20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6 –20.7.7 NMAC.

B. Pursuant to the Ordinance of the Borrower, the Borrower is authorized to enter into this Agreement and the Final Loan Agreement and to execute and deliver an Interim Promissory Note and Final Promissory Note. The terms of the Ordinance and Interim Promissory Note are incorporated as part of this Agreement as though fully set forth in this Agreement.

C. For the purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means only that plans are complete. NMED will bring to the Borrower's attention any obvious defects in the Project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the Borrower and its contractors. Any questions raised by NMED shall be resolved exclusively by the Borrower and its contractors, who shall remain responsible for the completion and success of the Project.

D. The Borrower warrants, represents and agrees that it, and its contractors,

subcontractors, employees, and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.

E. If the Borrower seeks additional funding from any other entity for the Project, the Borrower agrees that the Borrower is solely responsible for satisfying any requirements arising as a result of funding from that other entity.

F. The Borrower warrants that the internal financial statements provided to NMED by the Borrower for approval of the loan do not contain false material statements, representations, certifications, or omissions of material fact.

G. The Borrower shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.

H. The proceeds of the loan shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the loan include but are not limited to paying administrative expenses (including applications for funding), costs of Borrower employees, late fees, interest, or penalties. Those costs shall be paid by the Borrower.

I. The parties agree that allowable costs will be limited to those costs that arenecessary, reasonable, and related to the efficient achievement of the objectives of this Agreement. The Borrower must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and may reclaim improperly documented reimbursement until the Borrower provides sufficient justification. NMED may not disburse any loan funds if the Borrower fails to adhere to the schedule described in Section IV. above.

J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.

K. The Borrower agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.

L. The Borrower agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau will be given free access to the Project sites.

M. The Borrower agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.

N. The obligations of the Borrower under the Agreement are the special limited obligations of the Borrower as set forth in the Agreement and the Note. The Agreement and the Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement and Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment due on the Agreement or Note.

O. The Borrower agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.

P. The loan will not be used by the Borrower on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, § 47-5-1 to 47-5-8 NMSA 1978.

Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.

R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Borrower shall conduct an audit of the financial records pertaining to the Project.

VI. Covenants:

Attachment 1 (Covenants and Provisions Applicable to Net Environmental Services Division Revenue Debt Obligations ("System Covenants")) is hereby incorporated hereinbelow and shall be controlling in the event of inconsistency between the System Covenants and the following covenants, but only to the extent of such inconsistency.

A. (i) Disbursements (payment of loan funds) to the Borrower made pursuant to the Agreement will be available on and after the date of the execution of

the Agreement and Note if the Borrower is compliant with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Borrower to plan, design, construct or acquire the Project, or any phase thereof. The Borrower shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Borrower. All disbursements to the Borrower will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Borrower within ninety (90) days after the liability of the Borrower was incurred as evidenced by the date of the invoice for which disbursement is being requested. NMED shall use commercially reasonable efforts to disburse loan proceeds, or to notify Borrower that the disbursement request is incomplete or otherwise unsatisfactory, within 10 business days after receiving a disbursement request from Borrower.

(ii) NMED will compensate Borrower for the actual and reasonable costs of employing personnel (which may be a current employee of Borrower) tasked with assisting Borrower in preparing, documenting and submitting disbursement requests, and working with NMED to resolve issues relating thereto ("Disbursement Request Administration"). Reimbursement of the Borrower by NMED for the Borrower's actual and reasonable costs of employing such personnel is conditioned on the Borrower providing reasonably detailed, contemporaneous time records describing the activities of such personnel in connection with Disbursement Request Administration as part of each disbursement request. [Such costs [will] [will not] be paid from loan proceeds.]

B. The Borrower shall not sell, lease, or transfer any property related to the Project except as permitted by the Ordinance/Resolution, as amended, and supplemented.

C. The Borrower shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance/Resolution as adopted at the time of execution of the Agreement.

D. The Borrower hereby irrevocably agrees that the Borrower has fixed and collected, or will fix and collect, adequate rates, fees, and other charges for

the use of the System (as defined in the Ordinance/Resolution) which will be sufficient to satisfy the Agreement and the Note.

E. If the pledged funds shall prove insufficient to produce the Repayments set forth herein and in the Interim and Final Promissory Note, the Borrower agrees to adjust and increase such rates, fees, and charges in the manner authorized by law to provide funds sufficient to produce the repayment of the loan set forth herein and in the Interim and Final Promissory Note.

F. The Borrower shall not provide any free services of the Environmental Services Division System. The Borrower shall, to the full extent permitted by law, collect payment for Environmental Services Division services provided. The Borrower shall notify NMED should delinquent users impact their ability to service this agreement as defined.

G. The Borrower shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.

H. The following shall constitute an event of default under the Agreement:

1. The failure by the Borrower to pay the annual payment on the repayment of the loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at maturity or otherwise or

2. Default by the Borrower in any of its covenants or conditions set forth under the Agreement (other than a default set forth in the previous clause of this section) for 60 days after NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

I. Upon occurrence of an event of default:

1. The entire unpaid amount of the Agreement and Interim and Final Promissory Note may be declared by the NMED to be immediately due and payable, and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note from the Pledged Funds, either immediately or in the manner required by NMED in its declaration.

2. If the event of default is under clause one of Subsection H, NMED is authorized to set Environmental Services Division Services user rates in the area of the Borrower's jurisdiction in order to provide sufficient

money for repayment, on scheduled due dates of the loan and proper operation and maintenance of the Environmental Services Division System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the Environmental Services Division System shall be identified through a rate- setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.

3. If default by the Borrower is of covenants or conditions required under the Agreement, the Borrower may be required to refund the amount of the loan disbursed to the Borrower from NMED.

4. NMED shall have no further obligation to make disbursements to the Borrower under the Agreement and may pursue any other appropriate remedies.

J. NMED retains the right to seek enforcement of the terms of the Agreement. If the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for

Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

K. This Agreement, the Ordinance/Resolution and the Note incorporate all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement, the Ordinance/Resolution, and the Note. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement, the Ordinance/Resolution, and the Note.

L. This Agreement shall be binding upon and inure to the benefit of the Borrower, NMED and their respective successors. The rights and obligations under the Agreement and Interim and Final Promissory Note may not be assigned by the Borrower.

M. No change shall be made to the Agreement or the Interim and Final Promissory Note except in writing singed by NMED and the Borrower.

CWSRF FEDERAL REQUIREMENTS: APPLIES TO ALL PROJECTS

New Mexico CWSRF Loan Agreement Provision LA 1: Anti-Discrimination Laws (Super Cross- Cutters)

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Civil Rights Laws (i.e., Super Crosscutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability, or age, in programs or activities receiving federal financial assistance. All recipients of CWSRF financial assistance must agree, and required their contractors and subcontractors to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

New Mexico CWSRF Loan Agreement Provision LA2: Generally Accepted Governmental Accounting

All recipients of CWSRF financial assistance (Assistance Recipients) are required to comply with the following provisions:

Section 602(b)(9) of the Federal Water Pollution Control Act (FWPCA) states:

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets

The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB. CWSRF assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

Pursuant to Section 602(b)(9) of the FWPCA, all CWSRF Assistance Recipients must agree to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), using standards relating to the reporting of infrastructure assets.

New Mexico CWSRF Loan Agreement Provision LA13: Useful Life Requirement

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Section 603(d)(1)(A) of the Clean Water Act (as amended) restricts the terms of CWSRF loans to the lesser of 30 years or the useful life of the project. All applicants for CWSRF financial assistance agree to provide an engineer's estimate of the useful life of project components to be funded by the CWSRF.

New Mexico CWSRF Loan Agreement Provision LA14 Office of Inspector General Posting

The US Environmental Protection Agency requires that contracts exceeding $1,000,0000 prominently display the Office of the Inspector General Hotline poster within contractor work areas and facilities where work is performed.

Posters may be obtained at: https://www.epa.gov/office-inspector-general/poster-report-fraud-waste-and-abuse-epa-oig-hotlineThe parties have executed this Agreement on the dates set forth by their respective names.

LA 18 Cost and Effectiveness—Government Requirement

Under the Federal Water Pollution Control Act (FWPCA) section 602(b)(13), the CWSRF program requires that all assistance recipients certify that they have conducted the studies and evaluations described in 602(b) (13 (A) and (B) herein referred to collectively as a cost and effectiveness analysis. The statute requires that a cost and effectiveness analysis involve, at a minimum:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for conducting the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, considering—
    - the cost of constructing the project or activity.
    - the cost of operating and maintaining the project or activity over the life of the project or activity; and
    - the cost of replacing the project or activity.

CWSRF FEDERAL REQUIREMENTS: APPLIES ONLY TO TREATMENT WORKS PROJECTS

(UV Disinfection and Sewer Line Repair):

AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

The Federal Water Pollution Control Act (P.L. 92-500) Section 608 requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The Act states:

> SEC. 608. REQUIREMENTS.
> *(a)* IN GENERAL.—Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.
> *(b)* DEFINITION OF IRON AND STEEL PRODUCTS.—In this section, the term `iron and steel products' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.
> *(c)* APPLICATION.—Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—
>
> (1) applying subsection (a) would be inconsistent with the public interest.
> (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
> (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
>
> *(d)* WAIVER.—If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.
> *(e)* INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.
> *(f)* MANAGEMENT AND OVERSIGHT.—The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.
> *(g)* EFFECTIVE DATE.—This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that

agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

AMERICAN IRON AND STEEL (AIS) GUIDANCE

The following guidance excerpt has been provided from EPA:

(Complete guidance may be downloaded from: https://www.epa.gov/cwsrf/state-revolving-fund- american-iron-and-steel-ais- requirement)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:
Lined or unlined pipes or fittings;
Manhole Covers.
Municipal Castings (defined in more detail below),
Hydrants.
Tanks;
Flanges.
Pipe clamps and restraints; Valves.
Structural steel (defined in more detail below);
Reinforced precast concrete; and
Construction materials (defined in more detail below).

12) What does the term 'primarily iron or steel' mean?

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem coupling, valve, seals, etc.).
However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product

be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does 'produced in the United States' mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of 'municipal castings?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches;
Ballast Screen.
Benches (Iron or Steel);
Bollards.
Cast Bases.
Cast Iron Hinged Hatches, Square and
Rectangular; Cast Iron Riser Rings.
Catch Basin Inlet;
Cleanout/Monument Boxes;
Construction Covers and Frames;
Curb and Corner Guards.
Curb Openings.
Detectable Warning Plates;
Downspout Shoes (Boot,
Inlet).
Drainage Grates, Frames and Curb Inlets;
Inlets.
Junction
Boxes.
Lampposts.
Manhole Covers, Rings and Frames, Risers,
Meter Boxes.
Service Boxes.
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings.
Trash
receptacles;
Tree Grates.
Tree Guards;
Trench Grates;
and
Valve Boxes, Covers and Risers.

20) What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical

components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters,
heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

<u>Certification and Compliance</u>

NMED Form #C4 "American Iron and Steel (AIS) Certification" must be executed and included in the bid package. Failure to complete the certification will result the bid being returned. The contractor will

supply to the loan recipient manufacturers' certifications for each iron and steel item documenting/asserting that all manufacturing processes occurred in the United States. Such certifications will be submitted with shop drawings.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework is described in the guidance document found at: https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-waiver-process

Approved and denied waivers may be reviewed at: https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-approved-project-waivers and https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-withdrawn-or-denied-waivers

De Minimis Materials Waiver

The EPA has granted a nationwide waiver of the AIS requirements of the Consolidated Appropriations Act under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible infrastructure projects. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the total materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the total materials used in and incorporated into a project. Contractors who wish to use this waiver should determine the costs of all items installed or supplied for the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files and must summarize the

items in monthly draw requests to the owner: the total cost of all materials, the total cost of "incidental" materials, and the calculations by which they determined the percentage of incidental products installed or supplied for the project. None of the products specifically listed as "Covered Iron and Steel Products" are incidental, nor are the products identified in detail in the technical specifications.

New Mexico CWSRF Loan Agreement Provision LA9 Environmental Review Requirements

The Federal Water Pollution Control Act section 511(c)(1) applies the National Environmental Policy Act (NEPA) to assistance for the construction of treatment works. All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding, must undergo an environmental review following the procedures in NMED's State Environmental Review Process.

Assistance recipients ("sub-recipients") for CWSRF-funded treatment works projects are required to comply with Section 513 of the Federal Water Pollution Control Act (P.L. 92-500, as amended by the Water Resources Reform and Development Act of 2014) requiring all laborers and mechanics employed by contractors working on treatment works to be paid prevailing wages as determined by the Secretary of Labor. It is considered a Davis-Bacon related Act.

DAVIS-BACON REQUIREMENT (GOVERNMENTAL ENTITIES)

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/ weekly to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(c) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify

that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2014 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site,

www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for

this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work

they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until

an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii)The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB

prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub-recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

DAVIS-BACON REQUIREMENT (NON-GOVERNMENTAL ENTITIES)

Under these terms and conditions, the sub-recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Water Resource Reform and Development Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients must obtain proposed wage determinations for specific localities at https://beta.sam.gov/. After the Sub-recipient obtains its proposed wage determination, it must submit the wage determination to the **New Mexico Environment Department Construction Programs Bureau** ((505)-469-3459) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(d) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the

contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014

(b) Water Resource Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any

other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the

Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer

and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii)Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. **4. Contract Provision for Contracts in Excess of $100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub- recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

New Mexico CWSRF Loan Provision LA15 Fiscal Sustainability Plan

	Fiscal Sustainability Plan Requirement	LA15

The 2014 Clean Water Act amendments require recipients of CWRF loans for projects involving a publicly owned treatment works to certify that they have developed and implemented a Fiscal Sustainability Plan (FSP) or another plan that meets minimum requirements, or that they will prepare an FSP. The minimum required elements for an FSP are listed in Section 603(d)(1)(E) of the Clean Water Act. Loan recipients shall develop and implement a FSP that includes the following:

- An inventory of critical assets that are part of the system. Critical assets are those that are necessary for sustained system performance.
- An evaluation of the condition and performance of critical assets.
- A plan for maintaining, repairing and replacing critical assets and for funding those activities.
- An evaluation and implementation plan for water and energy conservation.

The FSP requirement applies to all publicly owned treatment works construction or design/ construction projects funded in-part or in-full of State Revolving Fund (SRF) loans. The FSP must cover the entire project for which SRF funding is provided.

At the completion of the project, the loan recipient can:

Certify that a Fiscal Sustainability Plan (FSP) has been developed and implemented that meets the minimum required elements listed above. The FSP certification statement must be submitted before a final loan agreement is executed. The FSP will be available for NMED review during a site visit or inspection.

Agree to develop and implement a Fiscal Sustainability Plan (FSP) that will meet the minimum required elements listed above. The certification statement must be submitted before a final loan agreement is executed. The FSP must be completed prior to final disbursement. The FSP will be available for NMED review during a site visit or inspection.

By executing this Agreement, the undersigned represents authorization to act on behalf of the Recipient.

BY:

_____

Signature of duly authorized Recipient Official City of Santa Fe

_____

Print Name

_____

Title

_____

Date

Issued and administered by:

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

BY: _____

Constructions Programs Bureau, Bureau Chief
Signed pursuant to February 19, 2024, Secretary of Environment Delegation Order

ATTACHMENT 1

COVENANTS AND PROVISIONS APPLICABLE
TO NET ENVIRONMENTAL SERVICES DIVISION OBLIGATIONS ('SYSTEM OBLIGATIONS")

Bracketed section references refer to the corresponding sections in Ordinance No. 2017-5, adopted by the Governing Body of the City of Santa Fe on March 29, 2017 ("Ordinance No. 2017-5").

Section 1. Definitions.

"Agreement" means this Clean Water State Revolving Loan Fund Interim Loan Agreement made by NMED (as defined below) to the City of Santa Fe, in the principal amount of $20,000,000, as a portion of the Funding Package consisting of $151,000,0000 total Loan at 0.01%, secured by a subordinate lien on the Net Revenues of the City of Santa Fe Environmental Services Division , and shall include the Final Loan Agreement at the time that the Final Debt Service Schedule has been provided by NMED.

"Agreement Debt Service Account" means the account of the Debt Service Fund established and maintained by the City in Section 2 hereof for the deposit of Pledged Revenues in amounts sufficient to make timely payments of the debt service requirements of this Agreement.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to the 2017 NMFA Loan Agreement and on all Superior Obligations and Parity Subordinate Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officer" means the City's Mayor, Manager, Finance Director and Treasurer, or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time.

"Governing Body" or "Council" means the City Council of the City, its governing body.

"Gross Revenues" means all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the City, or any municipal corporation or agency succeeding to the rights of the City, from the System.

"Historic Test Period" means any period of 12 consecutive months out of the 24 calendar months next preceding the delivery of additional Parity Bonds.

"Income Fund" or "Environmental Services Division Enterprise Fund" means the "City of Santa Fe Environmental Services Division Gross Income Fund" which is authorized to be continued in Section 2 hereof.

"Independent Accountant" means (i) the State Auditor and any accountant working under the supervision and control of the State Auditor, and (ii) any certified public accountant, registered accountant or firm of accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City who (a) is, in fact, independent and not under the domination of the City, (b) does not have any substantial interest, direct or indirect, with the City, and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

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

"Net Revenues" means Gross Revenues after deducting Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the System;

(b) insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay Debt Service Requirements on System Bonds) for Credit Facilities;

(d) Expenses other than Expenses paid from the proceeds of System Bonds;

(e) the costs of audits of the books and accounts of the System;

(f) amounts required to be deposited in the Rebate Fund;

(g) salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the City's general fund, liabilities incurred by the City as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Obligations" means bonds, notes or any other instrument which evidences a borrowing or other obligation of the City, including Qualified Exchange Agreements, secured by Net Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

"Operation and Maintenance Fund" means the "City of Santa Fe Environmental Services Division Operation and Maintenance Fund" authorized hereby.

"Outstanding Obligations" or "Outstanding System Obligations" means, collectively, Outstanding Superior Obligations and Outstanding Subordinate Obligations.

"Outstanding Superior Bonds" means the 2017 NMFA Loan Agreement and such other System Obligations as may be issued from time to time with a lien on Net Revenues on parity with the lien thereon of the 2017 NMFA Loan Agreement.

"Outstanding Parity Subordinate Obligations" means System Obligations with a lien on Net Revenues subordinate to the lien thereon of Superior Obligations, including, without limitation, this Agreement.

"Pledged Revenues" means Net Revenues of the System.

"Rate Stabilization Fund" means the Rate Stabilization Fund for System Bonds established in Section 2 herein.

"Rebate Fund" means a Rebate Fund that may be established by the City in connection with for System Bonds the interest on which is intended to be excludable from gross income for federal tax purposes.

"Replacement Fund" means the Replacement Fund established in Section 2 hereof.

"Subordinated Bonds" means all bonds and other obligations of the City hereafter issued with a lien on the Net Revenues subordinate to the lien of Superior Bonds on the Net Revenues and on parity wit the lien of Subordinate Bonds.

"System" means the municipally owned public utility designated as the City's Environmental Service Division, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the Environmental Services Division, and used in connection therewith or relating thereto, and any other related activity or enterprise of the City designated by the Council as part of the Environmental Services Division, whether situated within or without the limits of the City.

"System Bonds" or "System Obligations" means the 2017 NMFA Loan Agreement, additional Parity Bonds, Subordinated Bonds, and other similar obligations payable solely or primarily from Net Revenues which may from time to time be issued by the City.

"2017 NMFA Loan Agreement" means Loan Agreement 3664-PP by and between the New Mexico Finance Authority, as lender, and the City, as borrower, dated May 5, 2017 in an original principal amount of $1,300,582."

Section 2. Establishment or Continuation of Funds and Accounts. The City hereby establishes or continues the following funds:

(a) The "City of Santa Fe Environmental Services Division Acquisition Fund" is hereby established and shall be maintained by the City for deposit or crediting of proceeds of System Obligations and applied to costs of improvements to the System.

(b) The "City of Santa Fe Environmental Services Division Debt Service Fund" is hereby established and shall be maintained by the City for the deposit of Pledged Revenues in amounts sufficient to make timely payments of the Debt Service Requirements of this Agreement Outstanding Parity Obligations, and Outstanding Subordinate Obligations, if any.

(c) The "City of Santa Fe Environmental Services Division Income Fund" is hereby continued and shall be maintained by the City for deposit of the Gross Revenues of the System.

(d) The "City of Santa Fe Environmental Services Division Operation and Maintenance Fund" is hereby established and shall be maintained by the City for the payment of Operation and Maintenance Expenses.

(e) The "City of Santa Fe Environmental Services Division Replacement Fund" is hereby established and shall be maintained by the City for the purposes set forth in Section 5 hereof.

(f) The "City of Santa Fe Environmental Services Division Rate Stabilization Fund" is hereby established and shall be maintained by the City and used as provided in Section 6 hereof.

Section 3. Use of Gross Revenues. Use of Gross Revenues. As long as any System Bonds are Outstanding, all Gross Revenues shall be deposited in the Income

Fund and transferred from that Fund to the following funds and accounts or for payment of the following amounts in the order listed:

(a) Operation and Maintenance Expenses. A sufficient amount of Gross Revenues shall be set aside each month into the Operation and Maintenance Fund to be used to pay the current Operation and Maintenance Expenses as they become due.

(b) Debt Service Requirements of Superior Obligations. Net Revenues shall be transferred to the Debt Service Account established for each series of Outstanding Superior Bonds in approximately equal amounts each month to provide an amount sufficient to pay Debt Service Requirements on such series of Superior Bonds as they become due.

(c) Subsequent to the payments required by the outstanding Superior Obligations, any balance remaining in the Income Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of this Agreement and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of Superior Obligations hereafter authorized, issued and payable from the Net Revenues, as the same become due. So long as this Agreement remains outstanding, either as to principal or interest or both, the following payments shall be made monthly from Net Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i) Agreement Debt Service Account Payments.

The following amounts shall be withdrawn from the Income Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the Agreement Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the final debt service schedule for the Agreement, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Agreement, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Agreement.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the final debt service schedule for the Agreement, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the Agreement, and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Agreement.

(ii) Concurrently with Agreement Debt Service Account Payments described in subparagraph (1) above, Net Revenues shall be credited to the Debt Service Funds for Outstanding Parity Subordinate Obligations (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Parity Subordinate Obligations, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Parity Subordinated Obligations, and monthly thereafter, commencing on each Interest Payment

Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Parity Subordinate Obligations.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Parity Subordinate Obligations, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the Parity Subordinate Obligations, and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Parity Subordinate Obligations.

If, prior to any interest payment date or principal payment date, there has been accumulated in the Debt Service Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs (b), (c)(i) and (c)(ii) of this Section (whichever is applicable), may be appropriately reduced and the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date (whichever is applicable).

(d) Reserve Account. Net Revenues shall be transferred to the Reserve Account for each series of Superior Bonds with a Reserve Requirement each month to the extent that deposits are required to be made as a result of any draws on a Reserve Account Insurance Policy or deficiency in the Reserve Requirement for a series of Superior Bonds.

(e) Subordinated Bonds. Subsequent to the payments required by Outstanding Superior Bonds, Net Revenues shall be transferred to such funds and accounts as may be established by Supplemental Ordinance with respect to one or more series of Subordinated Bonds, including this Agreement, and used to pay Debt Service Requirements on Subordinated Bonds and to fund any Reserve Requirement for Subordinated Bonds.

(f) Replacement Fund. While any Parity System Obligations are Outstanding, money on deposit in the Replacement Fund shall be used only (i) for replacement costs and capital improvements to the System, (ii) for extraordinary charges relating to the financing or refinancing of the System, and (iii) to purchase or otherwise defease, or provide for defeasance of, Outstanding Obligations payable from Net Revenues.

(g) Rate Stabilization Fund. At the option of the City, Net Revenues may be transferred to the Rate Stabilization Fund to be used for the purposes for which Gross Revenues may be used.

(h) Surplus Net Revenues. Net Revenues shall be retained in the Income Fund or used for any other lawful System purpose including, but not limited to, redeeming or purchasing System Bonds or paying costs and expenses of the City relating to the administration of System Bonds but shall not be transferred to the general fund of the City except for Operation and Maintenance Expenses owed by the System to the City and except for taxes, payments in lieu of taxes, franchise fees, surcharges, assessments and other municipal or governmental charges of the City lawfully levied or assessed upon the System.

(i) Accumulation of Revenues. Gross Revenues need not be retained for any use or in any fund or account described in this Section 18.01 in excess of the Gross Revenues required for any current use or deposit. For the purposes of this subparagraph, the term current shall mean the month during which the Net Revenues are being distributed and the immediately following period until the next payment date for Debt Service Requirements on System Bonds.

Section 4. Termination Upon Deposits to Maturity. No payments need be made into the Debt Service Account or Reserve Account for a series of System Bonds if the sum of the amounts in that Debt Service Account and Reserve Account (without regard for the coverage available under any Reserve Account Insurance Policy) is not less than the Debt Service Requirements due and to become due on and before the final maturity date of that series of System Bonds, both accrued and not accrued, and all proceeds paid under any Reserve Account Insurance Policy and Bond Insurance Policy for that series of System Bonds have been reimbursed and all amounts owed to the providers of such policies have been paid in full. Unless otherwise provided in the Supplemental Ordinance applicable to a series of System Bonds, the money retained in those two accounts shall be used only to pay the Debt Service Requirements on that series of System Bonds when due, except that any money on deposit in any such Debt Service Account which is not necessary to pay such Debt Service Requirements shall be used as surplus Net Revenues and any money on deposit in any such Reserve Account which is not necessary to pay such Debt Service Requirements (other than proceeds of Outstanding System Bonds) shall be deposited in the Replacement Fund.

Section 5. Replacement Fund. In addition to Net Revenues, the City shall deposit in the Replacement Fund, all money released from a Reserve Account for a series of System Bonds in excess of the Reserve Requirement for that series pursuant to the ordinance authorizing such series, except for any such excess which is designated for another System purpose by resolution or ordinance of the Council or which is proceeds of Outstanding System Bonds, together with such other moneys from other sources as may be designated by the Council.

While any System Bonds are outstanding, money on deposit in the Replacement Fund shall be used only (i) for replacement costs and capital improvements to the System, (ii) for

extraordinary charges relating to the financing or refinancing of the System, and (iii) to purchase or otherwise defease, or provide for the defeasance of, Outstanding System Bonds.

Section 6. Rate Stabilization Fund. Money on deposit in the Rate Stabilization Fund may be withdrawn at any time and used for any purpose for which Gross Revenues may be used. If deposits to the Rate Stabilization Fund are made by the City from sources of legally available moneys other than Gross Revenues, then such deposits shall be excluded from computations required pursuant to Section 9 hereof.

Section 7. Pro Rata Deposits. If the amount of Net Revenues available for deposit in the Debt Service Fund is not sufficient to pay the entire amount required to be deposited in the Debt Service Accounts and/or Reserve Accounts, the Net Revenues available shall be deposited first in the Debt Service Accounts and then in the Reserve Accounts, in each case, pro rata based upon the amount required to be deposited in each Account to the total Net Revenues available for deposit.

Reimbursements owed to a Bond Insurer, Reserve Account Insurer or provider of another Credit Facility for amounts used to pay Debt Service Requirements on a series of System Bonds shall be paid on the same pro rata basis and with the same priority as are amounts to be deposited in the Debt Service Account or Reserve Account, as applicable, with respect to the applicable series of Parity Bonds (or comparable accounts with respect to a series of Subordinated Bonds).

Section 8. Additional Parity Subordinate Obligations.

No provision of this Agreement shall be construed in such a manner as to prevent the issuance by the City of additional Parity Subordinate Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this

Agreement; provided, however, that before any such additional Parity Subordinate Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Subordinate Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 9 hereof), it must be determined that:

(a) The City is then current in all of the accumulations required to be made into the Agreement Debt Service Account, the debt service account established in connection with the 2017 NMFA Loan, and the debt service accounts established in connection with any other Outstanding Superior Obligations and Parity Subordinate Obligations.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Agreement.

(c) The Pledged Revenues received by or credited to the City for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined maximum Aggregate Annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then Outstanding Parity Subordinate Obligations and the Parity Subordinate Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the City's Finance Director or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the Parity Subordinate Obligations proposed to be issued.

(e) No provision of this Agreement shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged

Revenues constituting a lien upon such Pledged Revenues (1) on parity with the lien thereon of Outstanding Superior Obligations, or (2) subordinate and junior to the lien of this Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Agreement as permitted by Section 5.6 hereof.

Section 10. Refunding Obligations. The provisions of Section 9 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Agreement, or any part thereof, is outstanding, the City shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Agreement or bonds to be refunded may not be compelled to surrender this Agreement or their bonds, unless this Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the City's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 9 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on parity with this Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 9 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 9 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Agreement).

Section 11. Superior Obligations Prohibited. As long as Parity Superior Bonds are outstanding, the City shall not issue additional System Bonds having a lien on the Net Revenues prior and superior to the lien of Parity Superior Bonds on Net Revenues.

Section 12. Protective Covenants. The City hereby covenants and agrees with each and every registered owner of Obligations that: Rate Covenant.

(a) Use Charges. The City has established and will continue to charge reasonable rates for services rendered by the City for use of the System taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net Revenues of the System. There shall be charged against users, rates and amounts which shall be increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and one hundred thirty percent (130%) of the Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

(b) Efficient Operation. The City will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the Wastewater System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the Service Area.

(c) Records. So long as there are Outstanding System Obligations, proper books of record and account will be kept by the City, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers for the Environmental Services Division ; (ii) the revenues separately received from charges by

classes of customers, including but not necessarily limited to classification by Environmental Services Division ; and (iii) a detailed statement of the expenses of the System.

(d) Right to Inspect. The Finance Authority and the Trustee shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System.

(e) Audits. The City agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, the City will, within one hundred eighty (180) days following the close of each Fiscal Year, cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant. Each audit will be available for inspection by the Finance Authority. The City will provide the holders of Outstanding Obligations with a copy of each audit promptly upon request. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(f) Billing Procedure. Bills for solid waste collection services furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the City. The rates and charges due shall be collected in a lawful manner. Solid waste services may be billed jointly with other utilities, provided that each such joint bill shall show separately the solid waste charges.

(g) Charges and Liens Upon System. The City will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or

governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The City will not create or permit any lien or charge upon the System or the Gross Revenues except as provided in this Agreement, or it will make adequate provisions to satisfy and discharge within sixty (60) days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Gross Revenues. However, the City shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings, except as otherwise provided in the ordinances or agreements of the City authorizing Outstanding System Obligations other than this Agreement.

(f) Insurance. The City will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self insured programs provided by municipalities which operate Environmental Services Division s. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the City may have a material interest and of which the City may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the City determines to be reasonable to protect against risks assumed

under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem Outstanding Obligations or be treated as Gross Revenues.

(g) Alienating System. The Ctu will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all extensions and additions that may be made thereto, until all Outstanding System Obligations shall have been paid in full, except that the City may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of Outstanding System Obligations, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System as provided herein.

(h) Competent Management. The City shall employ or contract for experienced and competent personnel to manage the System.

(i) Performing Duties. The City will faithfully and punctually perform all duties with respect to the System required by the Constitution and the laws of the State and the ordinances and resolutions of the City, relating to the System, this Agreement, and Outstanding System Obligations, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as hereinabove provided.

(j) Other Liens. Other than as disclosed to holders of Outstanding System Obligations, there are no liens or encumbrances of any nature, whatsoever, on or against the System or the revenues derived or to be derived from the operation of the same.

INTERIM PROMISSORY NOTE
($20,000,000 Environmental Services Division Loan)

To the New Mexico Environment Department (NMED)
Clean Water State Revolving Loan Fund (CWSRF)
-also known as-
Wastewater Facility Construction Loan Program

FOR VALUE RECEIVED, the **City of Santa Fe** (Borrower) promises to pay the NMED at:

New Mexico Environment Department
Construction Programs Bureau
1190 S. St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87505

or by electronic funds transfer (EFT)

or at such other place as NMED may hereafter designate in writing, the principal amount of

Twenty Million Dollars ($20,000,000)

or so much of that amount as has been paid by NMED to the Borrower pursuant to the terms of the Interim Loan Agreement (Agreement) or any amendment to the Agreement for CWSRF 140 A-F between NMED and the Borrower plus **0.01% project interest annually** from the date of each respective disbursement annually until paid in full. Effective on the execution of the Agreement.

The principal plus interest due, if applicable, and payable on this Note shall be payable as follows: Principal loaned, and the subsequent interest shall be due and paid according to the Final Promissory Note as described.

Repayment Rate and Schedule

Annual principal and interest payments will commence not later than one year after completion of the project and shall be paid in annual installments due on the anniversary of the first annual installment. A Final Promissory Note will be processed and executed, and the Agreement will be amended and executed as a Final Loan Agreement to reflect the final amount loaned by NMED to Borrower. The principal amount of the Final Promissory Note and Agreement, as amended, will be an amount equal to that loaned and paid to Borrower under this Note.

Source of Repayment

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as **Net Environmental Services Division System Revenue**. Except as stated in the Ordinance, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

Assignment

No assignment by NMED of the right to receive payments under this Note shall affect the Borrower's obligations or rights other than to make payments either by EFT or at the address designated by NMED to the Borrower in writing.

Collection and Default

At the option of NMED, any amount paid by NMED to collect amounts due under this Note or to preserve or protect NMED's rights under the Agreement shall become a part of, and bear interest at the interest rate as set forth in the previous REPAYMENT RATE AND SCHEDULE section above and shall become immediately due and payable by the Borrower to NMED upon demand by NMED. Events of default and remedies upon an event of default as described in the Agreement in COVENANTS are incorporated herein by reference.

Prepayment

The Borrower may prepay all or any part of the principal of this Note without penalty. Extra payments, shall, after payment of interest due, be applied to the reduction of principal. After any prepayment of principal, the Borrower shall continue to pay the amounts listed in the Agreement and Final Promissory Note until the entire principal and interest are paid in full.

Authority

This Note is authorized by the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC, and the Borrower's Ordinance No. 2024-6.

This Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall this Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment of the principal or interest on the Agreement or Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and effective as of the date listed below by the Borrower.

_____
Borrower's Authorized Signature

_____
Borrower's Printed Name

_____
Title

_____
Date

State of _

County of

Signed or attested before me on _____ by _____ ,
Date Witness for City of Sant Fe

_____
Notarial Officer Signature

[Official Stamp] Title of Office:

Clean Water State Revolving Loan Fund Interim Loan Agreement

City of Santa Fe

$114,000,000 Wastewater Utility System Loan Agreement

(Made pursuant to Funding Package consisting of $151,000,000 total Loan at 0.01%

The following items are included as part of the funding agreement:

- **Financial Pages and NMED Project Conditions, General Conditions, and Covenants**
- **Covenants and Provisions Applicable to Net Wastewater Utility System Revenue / Debt Obligations (Attachment 1)**
- **CWSRF Federal Requirements:**

Applies to All Projects:

- **Super Crosscutters**
- **Generally Accepted Government Accounting Practices**
- **Useful Life**
- **Office of the Inspector General Poster**
- **Cost and Effectiveness**

Applies only to Treatment Works Projects (UV Disinfection and Sewer Line Repair):

- **American Iron and Steel**
- **State Environmental Review Process**
- **Davis-Bacon Wage Rates**
- **Fiscal Sustainability Plan**

NEW MEXICO
ENVIRONMENT DEPARTMENT

INTERIM LOAN AGREEMENT
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF) –also known as-
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM

Loan Number: CWSRF 140 A-F

Name of Borrower: **City of Santa Fe**

$114,000,000 Wastewater Utility Loan Agreement (made as part of total CWSRF Loan package of $151,000,000, Interest Rate: 0.01%

This Interim Loan Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and the City of Santa Fe (Borrower) becomes effective on the date signed by the NMED. Borrower has enacted Ordinance No. 2024-6 approved on August 14, 2024 (as amended by Ordinance No. 2025-___ approved on _____, 2025), hereinafter referred to as the "Ordinance") which authorizes execution of this Agreement, authorizes the Borrower to accept loan funds from NMED, and irrevocably pledges Net Wastewater Utility System Revenues and Environmental Services Gross Receipts Tax Revenues (Pledged Funds) for the repayment of the loan.

Listed below are agency contacts.

Borrower's Name and Address: City of Santa Fe 200 Lincoln Avenue PO Box 909 Santa Fe, New Mexico 87504-0909	**NMED:** New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, New Mexico 87505 NMENV-cpbinfo@state.nm.us
Borrower's Contact Information: _____, Public Utilities Director (505) 955-4650	**NMED Contact Information:** Stephanie DuBois, Project Engineer (505) 538-5539, stephanie.dubois@env.nm.gov Maria Molina, Program Administrator (505) 670-3876, maria.molina2@env.nm.gov

Jonna Leigh Stack, Project Administrator 505-955-4206 jlstack@santafenm.gov	Rhonda Holderman, Financial Manager, Loans and Grants (505) 363-9396, Rhonda.holderman@env.nm.gov
Emily K. Oster, Finance Director	
(505) 955-6171	
5ekoster@santafenm.gov	

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Borrower's Loan Ordinance
Interim Promissory Note
Proposed Loan Amortization Schedule
Project Description Form

I. Project Description:

A. Projects under this agreement include:

- UV Disinfection Replacement Project.
- Sanitary Sewer Line Repair.
- Wastewater Treatment Plant Repair and Rehabilitation Project.

B. Borrower agrees that it will implement, in all respects, the project outlined in the attached Project Description, and made a part of this Agreement.

C. Borrower agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended loan agreement.

II. Loan Amount:

NMED agrees to loan funds to the Borrower to pay for approved costs to plan, acquire and construct the Project, in an amount not to exceed: $114,000,000 (Wastewater System Loan Amount) at the **interest rate of 0.01% annually** upon the terms and conditions set forth in this Agreement and the Interim Promissory Note.

Provided the Borrower complies with the Construction Conditions and the CWSRF Requirements below, the loan amount will be available for a period of three **(3) years** from the date of this Agreement. Subject to completion of the Project within the three (3) year construction period, Borrower shall determine the construction schedule for the project in its reasonable discretion.

III. Funding:

A. Project interest accrues during construction at **0.01%** annually from the

date of each disbursement from NMED to the Borrower up to the date the final disbursement request is approved by NMED. The interest accrued during construction, if applicable, shall be payable as follows:

1. Project Interest shall be due and payable in one lump sum within two weeks of receiving notice of final loan amount from the NMED, or

2. Project Interest shall be added to the loan amount disbursed and shall become part of the principal due during the term of the Final Promissory Note.

B. FINANCE COSTS

Finance costs, if applicable, will be determined upon the issuance of the Final Loan Agreement and will be based on the final amount loaned, accrued project interest and agreed upon repayment terms.

C. REPAYMENT TERMS

Repayment terms will be determined upon issuance of the Final Loan Agreement. Any loan term must be substantiated by the Borrower., and the loan term shall not exceed the average economic life of the project as a whole.. Repayment will begin not less than one year after project completion. Repayment need not be based on level payments of principal and interest, but may instead be structured to address Borrower's needs with respect to cash flow, anticipated utility rate increases, and other relevant factors, in Borrower's discretion; provided, that structured repayments shall not be interest-only, but shall include annual amortization of a portion of unpaid principal and payment of interest.

The Borrower may pay off ("Prepay") all or any part of the loan at any time following delivery of written notice to NMED of Borrower's election to Prepay, specifying the principal amount to be prepaid, together with interest thereon accrued to the date of prepayment.

D. ACTUAL LOAN AMOUNT DISBURSED

(i) If the loan amount disbursed is less than the amount in Section III. Loan Amount, then the Final Loan Agreement and the Final Promissory Note shall reflect actual loan disbursements. If the Borrower does not pay the Project Interest within two weeks of receiving notice of final loan amount from the NMED, then the accrued Project Interest shall be incorporated into the principal amount in the Final Promissory Note.

(ii) At the Borrower's request, NMED will reallocate unused loan amounts for other eligible projects of the Borrower, and will either amend an existing loan agreement and note ("Loan Documentation") or enter into new Loan Documentation with Borrower reflecting the reallocation of unused proceeds for other eligible purposes. Borrower shall be responsible for determining that funds pledged for repayment in connection with such Loan Documentation is from an appropriate source.

(iii) Within the State and Federal requirements applicable to the Loan Agreement, NMED intends to utilize amounts repaid by Borrower hereunder to provide additional loans to Borrower for eligible purposes, at Borrower's request.

E. SECURITY – PLEDGED FUNDS

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as (1) Net Revenues of the Wastewater Utility System owned and operated by the City of Santa Fe, and (2) Environmental Services Gross Receipts Tax Revenues, as more specifically defined in the Covenants and Provisions Applicable to Net Wastewater Utility System Revenue / Environmental Services Gross Receipts Tax Revenue Debt Obligations, attached hereto as Attachment 1 ("Attachment 1"), which are hereby incorporated in this Agreement.

Except as stated in Attachment 1, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

F. DEFAULT AND LATE CHARGES

Failure by the Borrower to pay the annual payments as set forth in the Final Loan Agreement and Final Promissory Note shall constitute an event of default. Late charges may be assessed at the discretion of NMED. See VI. COVENANTS, Sections H and I for default procedures.

G. DEMAND FEATURE

This Agreement has a demand feature in the event of default and the total principal and interest due shall be paid on demand. See VI. COVENANTS Sections H and I for default procedures.

H. NO DEBT SERVICE RESERVE FUND OR MATCHING REQUIREMENTS.

Borrower shall not be required to establish a debt service reserve fund or to provide matching funds pursuant to this Agreement. In lieu of debt service reserve fund requirements, Borrower shall comply with the Rate Covenant herein. See VI, COVENANTS Section E.

IV. Project Conditions:

A. After the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Borrower's attorney shall provide an opinion satisfactory to NMED that the Borrower is an incorporated entity.

B. Upon execution of this Agreement, the Borrower shall follow the procedures listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Borrower.

1. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Borrower is also required to contact

the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB email ptab@acecnm.org.)

2. If these Funds are to be used for engineering and/or other

professional services, the Borrower shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Borrower's staff will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Borrower's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at https://www.env.nm.gov/construction-programs/cpb-forms-and- documents-2/.

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.

4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.

5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.

6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.

7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.

8. NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans.

9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.

10. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61- 33-1 et seq.

11. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights- of-way necessary for the completion of work under this agreement.

12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance/Resolution and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

13. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 5728-1 et seq. The Project will not be considered complete until the work as defined in this Agreement has been fully performed, and finally and unconditionally accepted by the Borrower and NMED.

14. If the Funds are to be used for construction, final disbursement will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

    a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.

    b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower.

    c) A certificate of substantial completion including punch list items.

    d) A letter certifying project acceptance by the Borrower and the Borrower's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval.

    e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met.

    f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.

    g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, contractor(s) may furnish receipts or releases in full an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Borrower or its property might in any way be responsible,

have been paid or otherwise satisfied.

h) A written consent of the surety, if any, to final payment; and

i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.

j) Verification to NMED of FSP and written certification that a FSP is in place.

15. The Borrower must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

16. The Borrower shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.

17. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Borrower shall not proceed with construction of the Project until NMED has approved the Contract Documents.

18. Any change order to the Project construction contract which results in a change to the Project's contract amount, scope of work, or schedule must be approved by NMED.

19. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.

20. The Borrower must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Borrower must certify in writing that this has been done prior to the award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the

Borrower's attorney is required.

21. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.

22. The Borrower shall achieve Project Completion by the end of the loan agreement term. Project Completion means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

23. If the Borrower is unable to complete the project by the loan termination date, the Borrower must notify NMED at least 30 days prior to the loan termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Borrower shall refund any Funds disbursed to the Borrower by NMED within ninety (90) days of termination.

V. General Conditions:

A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations,
20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6 –20.7.7 NMAC.

B. Pursuant to the Ordinance of the Borrower, the Borrower is authorized to enter into this Agreement and the Final Loan Agreement and to execute and deliver an Interim Promissory Note and Final Promissory Note. The terms of the Ordinance and Interim Promissory Note are incorporated as part of this Agreement as though fully set forth in this Agreement.

C. For the purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means only that plans are complete. NMED will bring to the Borrower's attention any obvious defects in the Project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the Borrower and its contractors. Any questions raised by NMED shall be resolved exclusively by the Borrower and its contractors, who shall remain responsible for the completion and success of the Project.

D. The Borrower warrants, represents and agrees that it, and its contractors,

subcontractors, employees, and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.

E. If the Borrower seeks additional funding from any other entity for the Project, the Borrower agrees that the Borrower is solely responsible for satisfying any requirements arising as a result of funding from that other entity.

F. The Borrower warrants that the internal financial statements provided to NMED by the Borrower for approval of the loan do not contain false material statements, representations, certifications, or omissions of material fact.

G. The Borrower shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.

H. The proceeds of the loan shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the loan include but are not limited to paying administrative expenses (including applications for funding), costs of Borrower employees, late fees, interest, or penalties. Those costs shall be paid by the Borrower.

I. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and related to the efficient achievement of the objectives of this Agreement. The Borrower must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and may reclaim improperly documented reimbursement until the Borrower provides sufficient justification. NMED may not disburse any loan funds if the Borrower fails to adhere to the schedule described in Section IV. above.

J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.

K. The Borrower agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.

L. The Borrower agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's

Occupational Health and Safety Bureau will be given free access to the Project sites.

M. The Borrower agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.

N. The obligations of the Borrower under the Agreement are the special limited obligations of the Borrower as set forth in the Agreement and the Note. The Agreement and the Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement and Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment due on the Agreement or Note.

O. The Borrower agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.

P. The loan will not be used by the Borrower on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, § 47-5-1 to 47-5-8 NMSA 1978.

Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.

R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Borrower shall conduct an audit of the financial records pertaining to the Project.

VI. Covenants:

Attachment 1 (Covenants and Provisions Applicable to Net Wastewater Utility System Revenue Debt Obligations ("System Covenants")) is hereby incorporated hereinbelow and shall be controlling in the event of inconsistency between the System Covenants and the following covenants, but only to the extent of such inconsistency.

A. (i) Disbursements (payment of loan funds) to the Borrower made pursuant to the Agreement will be available on and after the date of the execution of the Agreement and Note if the Borrower is compliant with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Borrower to plan, design, construct or acquire the Project, or any phase thereof. The Borrower shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Borrower. All disbursements to the Borrower will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Borrower within ninety (90) days after the liability of the Borrower was incurred as evidenced by the date of the invoice for which disbursement is being requested. NMED shall use commercially reasonable efforts to disburse loan proceeds, or to notify Borrower that the disbursement request is incomplete or otherwise unsatisfactory, within 10 business days after receiving a disbursement request from Borrower.

(ii) NMED will compensate Borrower for the actual and reasonable costs of employing personnel (which may be a current employee of Borrower) tasked with assisting Borrower in preparing, documenting and submitting disbursement requests, and working with NMED to resolve issues relating thereto ("Disbursement Request Administration"). Reimbursement of the Borrower by NMED for the Borrower's actual and reasonable costs of employing such personnel is conditioned on the Borrower providing reasonably detailed, contemporaneous time records describing the activities of such personnel in connection with Disbursement Request Administration as part of each disbursement request. [Such costs [will] [will not] be paid from loan proceeds.]

B. The Borrower shall not sell, lease, or transfer any property related to the Project except as permitted by the Ordinance/Resolution, as amended, and supplemented.

C. The Borrower shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance as adopted at the time of execution of the Agreement.

D. The Borrower hereby irrevocably agrees that the Borrower has fixed and collected, or will fix and collect, adequate rates, fees, and other charges for the use of the System (as defined in the Ordinance) which will be sufficient to satisfy the Agreement and the Note.

E. If the pledged funds shall prove insufficient to produce the Repayments set forth herein and in the Interim and Final Promissory Note, the Borrower agrees to adjust and increase such rates, fees, and charges in the manner authorized by law to provide funds sufficient to produce the repayment of the loan set forth herein and in the Interim and Final Promissory Note, as set forth in the Rate Covenant in the System Covenants.

F. The Borrower shall not provide any free services of the Wastewater System. The Borrower shall, to the full extent permitted by law, collect payment for wastewater services provided. The Borrower shall notify NMED should delinquent users impact their ability to service this agreement as defined.

G. The Borrower shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.

H. The following shall constitute an event of default under the Agreement:

1. The failure by the Borrower to pay the annual payment on the repayment of the loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at maturity or otherwise or

2. Default by the Borrower in any of its covenants or conditions set forth under the Agreement (other than a default set forth in the previous clause of this section) for 60 days after NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

I. Upon occurrence of an event of default:

1. The entire unpaid amount of the Agreement and Interim and Final Promissory Note may be declared by the NMED to be immediately due and payable, and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note from the Pledged Funds, either immediately or in the manner required by NMED in its declaration.

2. If the event of default is under clause one of Subsection H, NMED is authorized to set wastewater user rates in the area of the Borrower's jurisdiction in order to provide sufficient money for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.

3. If default by the Borrower is of covenants or conditions required under the Agreement, the Borrower may be required to refund the amount of the loan disbursed to the Borrower from NMED.

4. NMED shall have no further obligation to make disbursements to the Borrower under the Agreement and may pursue any other appropriate remedies.

J. NMED retains the right to seek enforcement of the terms of the Agreement. If the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for

Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

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

L. This Agreement shall be binding upon and inure to the benefit of the Borrower, NMED and their respective successors. The rights and obligations under the Agreement and Interim and Final Promissory Note may not be assigned by the Borrower.

M. No change shall be made to the Agreement or the Interim and Final Promissory Note except in writing signed by NMED and the Borrower.

CWSRF FEDERAL REQUIREMENTS: APPLIES TO ALL PROJECTS

New Mexico CWSRF Loan Agreement Provision LA 1: Anti-Discrimination Laws (Super Cross- Cutters)

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Civil Rights Laws (i.e., Super Crosscutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability, or age, in programs or activities receiving federal financial assistance. All recipients of CWSRF financial assistance must agree, and required their contractors and subcontractors to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

New Mexico CWSRF Loan Agreement Provision LA2: Generally Accepted Governmental Accounting

All recipients of CWSRF financial assistance (Assistance Recipients) are required to comply with the following provisions:

Section 602(b)(9) of the Federal Water Pollution Control Act (FWPCA) states:

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets

The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB. CWSRF assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

Pursuant to Section 602(b)(9) of the FWPCA, all CWSRF Assistance Recipients must agree to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), using standards relating to the reporting of infrastructure assets.

New Mexico CWSRF Loan Agreement Provision LA13: Useful Life Requirement

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Section 603(d)(1)(A) of the Clean Water Act (as amended) restricts the terms of CWSRF loans to the lesser of 30 years or the useful life of the project. All applicants for CWSRF financial assistance agree to provide an engineer's estimate of the useful life of project components to be funded by the CWSRF.

New Mexico CWSRF Loan Agreement Provision LA14 Office of Inspector General Posting

The US Environmental Protection Agency requires that contracts exceeding $1,000,0000 prominently display the Office of the Inspector General Hotline poster within contractor work areas and facilities where work is performed.

Posters may be obtained at: https://www.epa.gov/office-inspector-general/poster-report-fraud-waste-and-abuse-epa-oig-hotlineThe parties have executed this Agreement on the dates set forth by their respective names.

LA 18 Cost and Effectiveness—Government Requirement

Under the Federal Water Pollution Control Act (FWPCA) section 602(b)(13), the CWSRF program requires that all assistance recipients certify that they have conducted the studies and evaluations described in 602(b) (13 (A) and (B) herein referred to collectively as a cost and effectiveness analysis. The statute requires that a cost and effectiveness analysis involve, at a minimum:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for conducting the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, considering—
    - the cost of constructing the project or activity.
    - the cost of operating and maintaining the project or activity over the life of the project or activity; and
    - the cost of replacing the project or activity.

CWSRF FEDERAL REQUIREMENTS: APPLIES ONLY TO TREATMENT WORKS PROJECTS

(UV Disinfection and Sewer Line Repair):

AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

The Federal Water Pollution Control Act (P.L. 92-500) Section 608 requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The Act states:

> SEC. 608. REQUIREMENTS.
> *(a)* IN GENERAL.—Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.
> *(b)* DEFINITION OF IRON AND STEEL PRODUCTS.—In this section, the term `iron and steel products' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.
> *(c)* APPLICATION.—Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—
>
> (1) applying subsection (a) would be inconsistent with the public interest.
> (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
> (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
>
> *(d)* WAIVER.—If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.
> *(e)* INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.
> *(f)* MANAGEMENT AND OVERSIGHT.—The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.
> *(g)* EFFECTIVE DATE.—This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that

agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

AMERICAN IRON AND STEEL (AIS) GUIDANCE

The following guidance excerpt has been provided from EPA:

(Complete guidance may be downloaded from: https://www.epa.gov/cwsrf/state-revolving-fund- american-iron-and-steel-ais- requirement)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:
Lined or unlined pipes or fittings;
Manhole Covers.
Municipal Castings (defined in more detail below),
Hydrants.
Tanks;
Flanges.
Pipe clamps and restraints; Valves.
Structural steel (defined in more detail below);
Reinforced precast concrete; and
Construction materials (defined in more detail below).

12) What does the term 'primarily iron or steel' mean?

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem coupling, valve, seals, etc.).
However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product

be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does 'produced in the United States' mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of 'municipal castings?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches;
Ballast Screen.
Benches (Iron or Steel);
Bollards.
Cast Bases.
Cast Iron Hinged Hatches, Square and
Rectangular; Cast Iron Riser Rings.
Catch Basin Inlet;
Cleanout/Monument Boxes;
Construction Covers and Frames;
Curb and Corner Guards.
Curb Openings.
Detectable Warning Plates;
Downspout Shoes (Boot,
Inlet).
Drainage Grates, Frames and Curb Inlets;
Inlets.
Junction
Boxes.
Lampposts.
Manhole Covers, Rings and Frames, Risers,
Meter Boxes.
Service Boxes.
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings.
Trash
receptacles;
Tree Grates.
Tree Guards;
Trench Grates;
and
Valve Boxes, Covers and Risers.

20) What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical

components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters,
heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

<u>Certification and Compliance</u>

NMED Form #C4 "American Iron and Steel (AIS) Certification" must be executed and included in the bid package. Failure to complete the certification will result the bid being returned. The contractor will

supply to the loan recipient manufacturers' certifications for each iron and steel item documenting/asserting that all manufacturing processes occurred in the United States. Such certifications will be submitted with shop drawings.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework is described in the guidance document found at: https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-waiver-process

Approved and denied waivers may be reviewed at: https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-approved-project-waivers and https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-withdrawn-or-denied-waivers

De Minimis Materials Waiver

The EPA has granted a nationwide waiver of the AIS requirements of the Consolidated Appropriations Act under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible infrastructure projects. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the total materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the total materials used in and incorporated into a project. Contractors who wish to use this waiver should determine the costs of all items installed or supplied for the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files and must summarize the

items in monthly draw requests to the owner: the total cost of all materials, the total cost of "incidental" materials, and the calculations by which they determined the percentage of incidental products installed or supplied for the project. None of the products specifically listed as "Covered Iron and Steel Products" are incidental, nor are the products identified in detail in the technical specifications.

New Mexico CWSRF Loan Agreement Provision LA9 Environmental Review Requirements

The Federal Water Pollution Control Act section 511(c)(1) applies the National Environmental Policy Act (NEPA) to assistance for the construction of treatment works. All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding, must undergo an environmental review following the procedures in NMED's State Environmental Review Process.

Assistance recipients ("sub-recipients") for CWSRF-funded treatment works projects are required to comply with Section 513 of the Federal Water Pollution Control Act (P.L. 92-500, as amended by the Water Resources Reform and Development Act of 2014) requiring all laborers and mechanics employed by contractors working on treatment works to be paid prevailing wages as determined by the Secretary of Labor. It is considered a Davis-Bacon related Act.

DAVIS-BACON REQUIREMENT (GOVERNMENTAL ENTITIES)

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/ weekly to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(c) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify

that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2014 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site,

www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for

this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work

they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until

an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii)The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB

prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub-recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

DAVIS-BACON REQUIREMENT (NON-GOVERNMENTAL ENTITIES)

Under these terms and conditions, the sub-recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Water Resource Reform and Development Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients must obtain proposed wage determinations for specific localities at https://beta.sam.gov/. After the Sub-recipient obtains its proposed wage determination, it must submit the wage determination to the **New Mexico Environment Department Construction Programs Bureau** ((505)-469-3459) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(d) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the

contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014

(b) Water Resource Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any

other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the

Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer

and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii)Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. **4. Contract Provision for Contracts in Excess of $100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub- recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

New Mexico CWSRF Loan Provision LA15 Fiscal Sustainability Plan

	Fiscal Sustainability Plan Requirement	LA15

The 2014 Clean Water Act amendments require recipients of CWRF loans for projects involving a publicly owned treatment works to certify that they have developed and implemented a Fiscal Sustainability Plan (FSP) or another plan that meets minimum requirements, or that they will prepare an FSP. The minimum required elements for an FSP are listed in Section 603(d)(1)(E) of the Clean Water Act. Loan recipients shall develop and implement a FSP that includes the following:

- An inventory of critical assets that are part of the system. Critical assets are those that are necessary for sustained system performance.
- An evaluation of the condition and performance of critical assets.
- A plan for maintaining, repairing and replacing critical assets and for funding those activities.
- An evaluation and implementation plan for water and energy conservation.

The FSP requirement applies to all publicly owned treatment works construction or design/ construction projects funded in-part or in-full of State Revolving Fund (SRF) loans. The FSP must cover the entire project for which SRF funding is provided.

At the completion of the project, the loan recipient can:

Certify that a Fiscal Sustainability Plan (FSP) has been developed and implemented that meets the minimum required elements listed above. The FSP certification statement must be submitted before a final loan agreement is executed. The FSP will be available for NMED review during a site visit or inspection.

Agree to develop and implement a Fiscal Sustainability Plan (FSP) that will meet the minimum required elements listed above. The certification statement must be submitted before a final loan agreement is executed. The FSP must be completed prior to final disbursement. The FSP will be available for NMED review during a site visit or inspection.

By executing this Agreement, the undersigned represents authorization to act on behalf of the Recipient.

BY:

_____

Signature of duly authorized Recipient
Official City of Santa Fe

_____

Print Name

_____

Title

_____

Date

Issued and administered by:

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

BY: _____

Constructions Programs Bureau, Bureau Chief
Signed pursuant to February 19, 2024, Secretary of Environment Delegation Order

ATTACHMENT 1

COVENANTS AND PROVISIONS APPLICABLE
TO OBLIGATIONS SECURED BY NET WASTEWATER SYSTEM REVENUES/
ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX REVENUES

Bracketed section references refer to the corresponding sections in Ordinance No. 2019-02 adopted by the Governing Body of the City of Santa Fe on January 30, 2019 ("Ordinance No. 2019-02) or the "Superior Obligations Ordinance").

Section 1. [Section 1.] Definitions.

"City's Chief Financial Officer" means the City officer currently designated as the "Finance Director" or his or her successor in function, provided that for purposes hereof, the designation of any successor in title by the City Manager, if given in writing, shall be conclusive.

"Consulting Engineer" means any registered or licensed professional engineer or firm of such engineers, entitled to practice and practicing as such under the laws of the State of New Mexico, retained and compensated by the City, but not in the regular employ of the City. The written determination by the Mayor or City Manager or the authorized designee of either, that an engineer or firm of engineers meets the foregoing qualifications of the preceding sentence shall be conclusive for purposes of any provision of this Agreement. As to construction drawings and specifications prepared for the Project by City employees working under the supervision of the City Engineer, this term may include the City Engineer.

"Agreement Debt Service Fund" means the fund established and maintained by the City for the deposit of Pledged Revenues in amounts sufficient to make timely payments of the Debt Service Requirements of this Agreement.

"Debt Service Requirements" for any period means the sum of: (i) the amount required to pay the interest, or to make reimbursements for payments of interest, becoming due on the applicable Obligations during such period; plus (ii) the amount required to pay the principal or accreted value, or to make reimbursements for the payment of principal or accreted value, becoming due on the applicable Obligations during that period, whether at maturity, an accretion term date or upon mandatory sinking fund redemption dates, plus (iii) any net periodic payments on a notional amount required to be made by the City pursuant to a Qualified Exchange Agreement minus (iv) any net periodic payments on a notional amount to be received by the City pursuant to a Qualified Exchange Agreement.

(a) No payments required on the applicable Obligations shall be included in any computation of Debt Service Requirements for any computation period prior to the maturity or otherwise certain due dates thereof which may occur because of the exercise of an option by the City, or which may otherwise become due by reason of any other circumstance or contingency, including acceleration, which constitute other than regularly scheduled payments of principal, accreted value, interest or other regularly scheduled payments on the applicable Obligations.

(b) Debt Service Requirements required to be made pursuant to a Qualified Exchange Agreement shall be based upon the actual amount required to be paid by the City, if any, to the Qualified Counterparty. In determining that amount, any payments required to be made by either party to the Qualified Exchange Agreement at a Variable Exchange Rate shall be computed, in determining the obligation of the City under the Qualified Exchange Agreement, using the procedures set forth in the ordinance in which Qualified Exchange Agreement was authorized.

(c) The computation of interest for the purposes of this definition shall be made without considering the interest rate payable pursuant to a Credit Facility, unless, at the time of

computation of Debt Service Requirements, payments on Obligations are owed to, or Obligations are owned or held by, the provider of a Credit Facility pursuant to the provisions of that Credit Facility.

(d) The accreted value of capital appreciation bonds shall be included in the calculation of interest and principal only for the applicable year during which the accreted value becomes payable.

(e) In any computation of Debt Service Requirements relating to the issuance of additional Parity Obligations:

(1) There shall be deducted from that computation (i) amounts on deposit in an escrow account related to an issue of Cross-over Refunding Obligations and (ii) proceeds of a series of Obligations deposited to the credit of an account for the payment of capitalized interest on Obligations included as part of the computation during the applicable period.

(2) There may be made the adjustment to the Debt Service Requirements applicable to Bond Anticipation Notes described in the ordinance in which the Bond Anticipation Notes were authorize.

(f) Except as otherwise provided in the ordinance authorizing the issuance of Crossover Refunding Obligations, the purchase or tender price of Put Obligations resulting from the optional or mandatory tender or presentment for purchase of those Put Obligations shall not be included in any computation of Debt Service Requirements.

"Environmental Services Gross Receipts Tax Ordinance" means the City Ordinance No. 1993-20 imposing the Environmental Services Gross Receipts Tax, as amended.

"Environmental Services Gross Receipts Tax Revenue Fund" means the "City of Santa Fe, New Mexico Environmental Services Gross Receipts Tax Revenue Fund," maintained by the City and continued by Section 19 of this ordinance, into which the City shall deposit the Environmental Services Gross Receipts Tax Revenues.

"Environmental Services Gross Receipts Tax Revenues" means the environmental services gross receipts tax revenues received by the City pursuant to Section 7-19D-10, NMSA 1978 and the Environmental Services Gross Receipts Tax Ordinance.

"Gross Revenues," "revenues," "gross revenues," "income" or "gross income" from the System means all income and revenues directly or indirectly derived by the City from the operation and use of the Wastewater System, or any part of the Wastewater System, and includes, without limitation, all revenues received by the City, or any municipal corporation or agency succeeding to the rights of the City, from the Wastewater System and from the sale and use of wastewater, wastewater services or facilities, or any other service, commodity or facility or any combination thereof furnished to the inhabitants in the customer service area for the Wastewater System. Such term also includes:

(a) Investment earnings allocated to the Wastewater Fund by the City from amounts in the Debt Service Fund and from surplus Wastewater System Net Revenues in accordance with the provisions of the ordinance or ordinances authorizing outstanding Wastewater System obligations under the heading Administration of Wastewater Fund and Pledged Environmental Services Gross Receipts Tax Revenue Fund.

(b) All income derived from the investment of any money in the Wastewater Fund and Wastewater System Rate Stabilization Account;

(c) Money released from the Wastewater System Rate Stabilization Account to the extent that the amount released is used to pay Wastewater System Operation and Maintenance Expenses or Debt Service Requirements on Parity Wastewater System Obligations in the year released; provided that withdrawals from the Wastewater Rate Stabilization Account shall not be included in Wastewater System Gross Revenues for the purposes of the Rate Covenant in any two consecutive calendar years;

(d) Property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the Wastewater System; and

(e) That portion of expansion charges and/or impact fees established specifically to pay debt service on debt obligations.

Gross Revenues do not include:

(a) any money received as (i) wastewater testing fees, (ii) grants or gifts from the United States of America, the State or other sources, (iii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use or (iv) the capital improvement portion of any expansion charges and/or impact fees;

(b) taxes and/or fees collected by the City and remitted to other governmental agencies; and

(c) condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

"Historic Test Period" means any twelve consecutive calendar months designated by an Authorized Officer from time to time out of the eighteen calendar months next preceding the date

of adoption of the City ordinance authorizing the issuance of System Obligations without regard to any resolution or ordinance supplementing or amending the authorizing ordinance.

"Independent Accountant" means any registered or certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City, who (1) is, in fact, independent and not under the domination of the City, (2) does not have any substantial interest, direct or indirect, with the City, and (3) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City; "Independent Accountant" also means the State Auditor of the State of New Mexico.

"Net Revenues", "Net Revenues of the System", "net revenues" or "net income" means the Gross Revenues after deducting Operation and Maintenance Expenses of the System.

"Obligations" means bonds, notes or any other instrument which evidences a borrowing or other obligation of the City, including Qualified Exchange Agreements, secured by Pledged Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the Wastewater System, in any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the Wastewater System including, without limiting the generality of the foregoing:

(a) legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the Wastewater System;

(b) insurance premiums for the Wastewater System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) the costs of audits of the books and accounts of the Wastewater System:

(d) amounts required to be deposited in the Rebate Fund;

(e) salaries, administrative expenses, labor costs, surety bonds and the cost of materials and supplies used for or in connection with the current operation of the Wastewater System; and

(f) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the Wastewater System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by the City as a result of its negligence or other misconduct in the operation of the Wastewater System, any charges for the accumulation of reserves for capital replacements or any Wastewater System Operation and Maintenance Expenses payable from moneys other than Wastewater System Gross Revenues.

"Operation and Maintenance Fund" means the "City of Santa Fe Wastewater Utility System Operation and Maintenance Fund" which is continued in Section 20A of Ordinance No. 2019-02.

"Outstanding Obligations" means, collectively, Outstanding Superior Obligations and Outstanding Subordinate Obligations.

"Outstanding Subordinate Obligations" means Obligations, including this Agreement

, secured by a pledged of Net System Revenues with a nonexclusive subordinate lien thereon, and a pledge of Environmental Services Gross Receipts Tax Revenues with a nonexclusive subordinate lien thereon.

"Outstanding Superior Obligations" means the City of Santa Fe, New Mexico Gross Receipts Tax (Subordinate Lien) / Wastewater System Refunding Revenue Bonds, Series 2012B, and the City of Santa Fe, New Mexico Net Wastewater Utility System / Environmental Services Gross Receipts Tax Improvement Revenue Bonds, Series 2019, each of which is secured by a pledged of Net System Revenues with a nonexclusive first lien thereon, and a pledge of Environmental Services Gross Receipts Tax Revenues with a nonexclusive subordinate lien thereon.

"Parity Subordinate Obligations" means this Agreement, the Outstanding Subordinate Obligations, and additional Subordinate Obligations, if any, issued with a lien on Pledged Revenues on parity with the lien thereon of this Agreement and the Outstanding Subordinate Obligations.

"Pledged Revenues" means, collectively, the Net Revenues and the Environmental Gross Receipts Tax Revenues.

"Rate Stabilization Fund" means the Wastewater System Rate Stabilization Fund continued in the applicable section of the ordinance in which Outstanding Obligations were authorized.

"Related Documents" means, in connection with Outstanding Obligations, the Pricing Certificate, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the Preliminary Official Statement, the Official Statement, and any other document or agreement

containing an obligation of the City as may be required in connection with the issuance of the Obligations.

"Replacement Fund" means the Wastewater System Replacement Fund continued in the applicable section of the ordinance in which Outstanding Obligations were authorized.

"System," or "Utility" means the municipally owned public utility designated as the City's wastewater utility system, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, construction or otherwise, and used in connection with the wastewater utility system of the City and in any way appertaining thereto, whether situated within or without the limits of the City.

"Wastewater Fund" or "Income Fund" means the "City of Santa Fe Wastewater System Gross Income Fund" which was created in Ordinance 1997-30 adopted by the City Council on October 29, 1997 and is continued in the applicable section of the ordinance in which Outstanding Obligations were authorized, which fund is held by the City.

Section 2. [Section 19.] Funds and Accounts. The City hereby creates, or continues, as applicable, the following special and separate funds:

A. Wastewater Fund. Continues the Wastewater Fund to be maintained and controlled by the City as a separate and distinct fund for deposit of the Gross Revenues.

B. Rate Stabilization Fund. Continues the Wastewater System Rate Stabilization Fund as a special and separate fund to be maintained and controlled by the City for the purposes described in Section 21.

C. Replacement Fund. Continues the Wastewater System Replacement Fund as a special and separate fund to be maintained and controlled by the City for the purposes described in Section 21.

D. Environmental Services Gross Receipts Tax Revenue Fund. Continues the Environmental Services Gross Receipts Tax Revenue Fund previously established and maintained by the City.

Section 3. [Section 20.] Deposit of Gross Revenues and Pledged Environmental Services Gross Receipts Tax Revenues. So long as any Obligations are outstanding, the Gross Revenues shall, immediately upon receipt thereof by the City, be set aside and deposited into the Wastewater Fund. All money deposited into the Wastewater Fund shall be held separate and apart from the City's general fund and applied only in accordance with the provisions of this ordinance and any other City ordinance authorizing the issuance of Obligations payable from the Net Revenues.

So long as any Obligations are outstanding, the Pledged Environmental Services Gross Receipts Tax Revenues shall, immediately upon receipt thereof by the City, be set aside and deposited into the Environmental Services Gross Receipts Tax Revenue Fund. All money deposited into the Environmental Services Gross Receipts Tax Revenue Fund shall be held separate and apart from the City's general fund and applied only in accordance with the provisions of this ordinance and any other City ordinance authorizing the issuance of Obligations payable from the Pledged Environmental Services Gross Receipts Tax Revenues.

Section 4. [Section 21.] Administration of Wastewater Fund and Pledged Environmental Services Gross Receipts Tax Revenue Fund. So long as any Superior Obligations shall be outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Wastewater Fund:

A. Administration of Wastewater Fund. So long as any Obligations shall be outstanding, the following payments shall be made from the Wastewater Fund:

(1) Operation and Maintenance Expenses. As a first charge on the Wastewater System Gross Revenues, there shall be paid the Operation and Maintenance Expenses of the Wastewater System as they become due and payable.

(2) Debt Service Fund Payments. Second, concurrently with the payments described in paragraph A(1) of this Section, the following amounts shall be withdrawn from the Wastewater Fund and credited to the Debt Service Fund:

(a) Interest Payments. Monthly, commencing on the first day of the first month following the delivery of Superior Obligations, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on such Superior Obligations then outstanding and monthly thereafter commencing on each interest payment date, one-sixth (1/6th) of the amount necessary to pay the next maturing installment of interest on the outstanding Superior Obligations, and

(b) Principal Payments. Monthly, commencing on the first day of the first month following delivery of the Superior Obligations, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal on the Superior Obligations and monthly thereafter commencing on each principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Superior Obligations.

(3) Third, subsequent to the payments required by the outstanding Superior Obligations, any balance remaining in the Wastewater Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of this Agreement and all other Outstanding Parity Subordinate Obligations or other obligations, if

any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of Superior Obligations hereafter authorized, issued and payable from the Net Revenues, as the same become due. So long as this Agreement remains outstanding, either as to principal or interest or both, the following payments shall be made monthly from Net Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i) Agreement Debt Service Fund Payments. The following amounts shall be withdrawn from the Wastewater Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the Agreement Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the final debt service schedule for the Agreement, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Agreement, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Agreement.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the final debt service schedule for the Agreement, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the Agreement, and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Agreement.

If prior to any interest payment date or principal payment date, there has been accumulated in the Debt Service Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs A(2)(a), A(2)(b)and A(3) above (whichever is applicable), may be appropriately reduced and the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date (whichever is applicable).

B. Administration of the Pledged Environmental Services Gross Receipts Tax Revenue Fund. So long as any of Obligations secured by Pledged Environmental Services Gross Receipts Tax Revenues are outstanding, the following payments shall be made from the Pledged Environmental Services Gross Receipts Tax Revenues:

(1) First, as a first charge on the Pledged Environmental Services Gross Receipts Tax Revenues, the amounts necessary to pay the Debt Service Requirements on outstanding bonds or obligations, with a lien on the Pledged Environmental Services Gross Receipts Tax Revenues prior and superior to the lien thereon of this Agreement as are required from the Environmental Services Gross Receipts Tax Revenue Fund, pursuant to the ordinances authorizing the outstanding superior Environmental Services Gross Receipts Tax obligations as required by such ordinances.

(2) Second, but subject to and after the withdrawals authorized by the preceding paragraph B(1), so long as this Agreement shall be outstanding, to the extent that any monthly payment required to be made into the Debt Service Fund has not been made from the Wastewater Fund or from any other legally available source, the following amounts shall be withdrawn from the Environmental Services Gross Receipts Tax Revenue Fund and credited to the Bond Fund:

(a) Interest Payments. Monthly, commencing on the first day of the first month following the delivery of the final debt service schedule for this Agreement, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on this Agreement then outstanding and monthly thereafter commencing on each interest payment date, one-sixth (1/6th) of the amount necessary to pay the next maturing installment of interest on this Agreement, and

(b) Principal Payments. Monthly, commencing on the first day of the first month following the delivery of the final debt service schedule for this Agreement, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal on this Agreement and monthly thereafter commencing on each principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal thereon.

(3) Third, but concurrently with the payments required by paragraph B(2) of this section, funds remaining in the Environmental Services Gross Receipts Tax Revenue Fund, shall be used by the City to pay the Debt Service Requirements of such additional Parity Subordinate Tax Obligations, if any, hereafter authorized to be issued and payable from Pledged Environmental Services Gross Receipts Tax Revenues.

If prior to any interest payment date or principal payment date, there has been accumulated in the Bond Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs B(2)(a), B(2)(b) and B(2)(c) (whichever is applicable) of this paragraph, may be appropriately reduced and the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date (whichever is applicable).

C. Termination Upon Deposits to Maturity. No payment need be made into the Bond Fund if the amount in such funds totals a sum at least equal to the entire amount of Bonds then outstanding, both as to principal and interest to their respective maturities, and both accrued and not accrued, in which case, moneys in the Bond Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue and any moneys in excess thereof in the Bond Fund and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the City.

D. Payment of Additional Environmental Obligations and Qualified Exchange Agreements. Either prior to, concurrently with or subsequent to the payments required by Paragraphs A and B of this Section [Section 21], depending upon whether the additional Obligations are Superior Environmental Services Gross Receipts Tax Obligations, Parity Subordinate Environmental Services Gross Receipts Tax Obligations, Parity Wastewater System / Environmental Services Gross Receipts Tax Obligations, Environmental Services Gross Receipts Tax Obligations, or subordinate Wastewater System / Environmental Services Gross Receipts Tax Obligations, as provided in this Ordinance, the Pledged Revenues shall be used by the City for the payment of Debt Service Requirements on this additional Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues as the same accrue. In the event that such obligations are Parity Superior Obligations, the payments of Debt Service Requirements on such additional Obligations shall be made concurrently with the payments required by Paragraphs A(2) and B(2) of this Section 21 (provided that such payments may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Obligations). The following amounts required to be paid by the City shall be paid from Pledged Revenues with the same priority as other payments of Debt Service Requirements on Parity Superior Obligations:

(1) Any amount to reimburse or pay a bond insurer or reserve account insurer or guarantor, or to make payments or reimbursements pursuant to another Credit Facility, for payments of Debt Service Requirements made on Parity Superior Obligations; and amounts payable to a Qualified Counterparty under a Qualified Exchange Agreement, excluding Exchange Termination Payments, if such payments are designated in a City ordinance relating to that Qualified Exchange Agreement as having a lien on Pledged Revenues on a parity with the lien thereon of Parity Superior Obligations;

(2) Reimbursement of any reserve fund Credit Facility obtained for any issue of Parity Obligations; and

(3) Cash deposits to any required reserve fund established with respect to any issue of Parity Obligations.

Each payment of Debt Service Requirements on Parity Superior Obligations shall be transferred to the Paying Agent for payment of Parity Superior Obligations, or directly to a Qualified Counterparty, bond insurer, reserve account insurer or guarantor or other provider of a Credit Facility entitled to receive payments on Parity Superior Obligations, on or before the due date of such payment.

G. Use of the Wastewater System Rate Stabilization Fund. Amounts deposited in the Wastewater System Rate Stabilization Fund may be withdrawn at any time and used for any purpose for which Wastewater System Gross Revenues may be used.

Section 5. Additional Parity Subordinate Obligations. Parity Subordinate Wastewater System / Environmental Services Gross Receipts Tax Obligations may be issued for the purposes permitted by the Act including, but not limited to (i) financing the costs of a project; or (ii) providing additional funds for deposit into the Wastewater System Replacement Fund and

paying the costs incident to the issuance of such Parity Subordinate Obligations or any combination of the foregoing.

A. Limitations Upon Issuance of Additional Parity Subordinate Obligations. The tests required in this Section shall be performed without adjustment for payments to or withdrawals from the Wastewater System Rate Stabilization Fund. Except as permitted herein, prior to the issuance of additional Parity Subordinate Obligations, the City shall be current in making all deposits required by Section 3 and the following test shall be satisfied:

(i) a certificate prepared by the City Finance Director showing that the Pledged Revenues for the Historic Test Period were at least equal to 110% of the maximum combined annual Debt Service Requirements for all Outstanding Superior Obligations and Parity Subordinate Obligations which will be outstanding immediately after the issuance of the proposed Parity Subordinate Obligations, or

(ii) a certificate prepared by a Consulting Engineer showing that:

(a) the Pledged Revenues for the Historic Test Period were at least equal to 110% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Subordinate Obligations immediately preceding the issuance of the Parity Subordinate Obligations proposed to be issued; and

(b) for each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated completion date of the specified project(s) to be funded with the proceeds of such Parity Obligations, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant; and

(c) the estimated Pledged Revenues for each of the three Fiscal Years immediately following the latest estimated completion date for the specified project(s) to be financed with proceeds of such Parity Subordinate Obligations, as certified to the Consulting Engineer by an Authorized Officer of the City will be at least equal to 110% of the maximum combined annual Debt Service Requirements for all Outstanding Superior Obligations and Parity Subordinate Obligations which will be outstanding immediately after the issuance of the proposed Parity Subordinate Obligations.

For purposes of subsections (ii)(b) and (c) above, in estimating Wastewater System Net Revenues, the Consulting Engineer may take into account (1) reasonable Wastewater System Gross Revenues from specified Wastewater System projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Wastewater System Gross Revenues which have been approved by the City and will be in effect during the period for which the estimates are provided, and (3) any other increases in Wastewater System Gross Revenues which the Consulting Engineer believes to be a reasonable assumption for such period. With respect to Wastewater System Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Wastewater System Operation and Maintenance Expenses, (ii) Wastewater System Operation and Maintenance Expenses associated with the specified Wastewater System projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Wastewater System Net Revenues and shall also

set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consultant may rely upon financial statements prepared by the City which have not been subject to audit by an Independent Accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

(iv) Nothing contained in this Agreement shall be construed to prevent the City from issuing bonds or other obligations with a lien on Pledged Revenues subordinate or junior to the lien of the Parity Subordinate Obligations on Pledged Revenues.

(v) The City may issue additional obligations payable from Pledged Revenues with a lien on Pledged Wastewater System Revenues superior to the lien of Parity Subordinate Obligations (provided, that such Superior Lien Obligations may be issued in compliance with the requirements for issuing such obligations as provided in the applicable section of the ordinance in which Outstanding Superior Lien Obligations were authorized).

Section 6. Refunding Bonds. The provisions of Section 4 hereof are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time after this Agreement, or any part thereof, shall remain outstanding, the City shall find it desirable to refund any outstanding Parity Subordinate Obligations or other outstanding obligations payable from the Pledged Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only

with the consent of the registered owner or owners thereof, unless the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the City's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed (except as provided in Paragraph A of Section 5 and in Paragraphs B and C of this Section).

B. Limitations Upon Issuance of Refunding Obligations. No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on parity with this Agreement authorized, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien thereon of this Agreement; or

(2) The refunding bonds or other refunding obligations are issued in compliance with Paragraph A of Section 5 of above.

C. Refunding Part of an Issue. The refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any there be; and the registered owner or owners of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the registered owner or owners of the bonds or other obligations of the same issue refunded thereby.

D. Limitations Upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may by ordinance provide, subject to the inclusion of any such rights and privileges designated in Paragraph C of this Section, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded

portion of such outstanding obligations of any one or more issues (including but not necessarily limited to the issue herein authorized). If only a part of the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues are refunded, then such obligations may not be refunded without the consent of the registered owner or owners of the unrefunded portion of such obligations, unless:

(1) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations, or

(2) The refunding bonds or other refunding obligations are issued in compliance with Paragraph A of Section 5 above, or

(3) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

E. Cross-over Refunding Bonds. If the refunding bonds to be issued are Cross-over Refunding Bonds, the ordinance providing for the issuance thereof shall provide (1) that until the date on which the principal portion of the related Parity Subordinate Obligations being refunded is to be paid or redeemed from the proceeds of such Cross-over Refunding Bonds, the Cross-over Refunding Bonds shall not be Parity Subordinate Obligations and shall be payable solely from the escrow provided for in the related ordinance, and (2) a certificate of an Independent Accountant shall be prepared to demonstrate the sufficiency of the moneys and investments in the escrow to pay the principal of and interest on the Cross-over Refunding Bonds until the date on which the principal portion of the related Parity Subordinate Obligations being refunded is to be paid or redeemed and to pay or redeem the related Parity Subordinate Obligations being refunded.

Section 7. Protective Covenants. The City hereby covenants and agrees with each and every registered owner of Obligations that:

A. Rate Covenant.

(1) The City covenants that it will at all times fix rates and collect charges for each class of service rendered by the Wastewater System, and to, from time to time, amend or adjust such rates so that Wastewater System Gross Revenues, together with Pledged Environmental Services Gross Receipts Tax Revenues, shall always be sufficient to provide for the payment of the Debt Service Requirements on all Outstanding Superior Obligations, and that Wastewater System Gross Revenues, together with Pledged Environmental Services Gross Receipts Tax Revenues shall always be sufficient to provide for the payment of Parity Subordinate Obligations as and when the same become due and payable, to maintain the funds and accounts established in this Agreement, to provide for the payment of Wastewater System Operation and Maintenance Expenses which may be necessary to preserve the same in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet on-going legal obligations to be paid at that time; and

(2) The City further covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Wastewater System Net Revenues, together with the Environmental Services Gross Receipts Tax Revenues, shall at least equal the greater of (a) the Debt Service Requirements on all Outstanding Superior Obligations, this Agreement, and Parity Subordinate Obligations, if any, in such Fiscal Year and the deposits required by this Agreement to be made into the various funds of this Agreement in such year or (b) 110% of the Debt Service Requirements on all Outstanding Superior Obligations, this Agreement, and Parity Subordinate Obligations, if any, in such Fiscal Year.

Failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under this Agreement so long as the City, within 180 days, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer which would bring the City into compliance with the Rate Covenant. The City is also required under this Agreement in each Fiscal Year to complete a review of its financial condition for the purpose of estimating whether the Wastewater System Net Revenues, together with the Environmental Services Gross Receipts Tax Revenues, for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth above. If the City determines that the Wastewater System Net Revenues, together with the Environmental Services Gross Receipts Tax Revenues, may not be so sufficient, it shall forthwith cause the Consulting Engineer to make a study for the purpose of recommending a schedule of fees, rates and charges for the Wastewater System which, in the opinion of the Consulting Engineer, will cause sufficient Wastewater System Gross Revenues, together with the Environmental Services Gross Receipts Tax Revenues, to be collected in such Fiscal Year to comply with the Rate Covenant set forth above and will cause additional Wastewater System Gross Revenues to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City shall as promptly as practicable adopt and place in effect the schedule of fees, rates and charges recommended or approved by the Consulting Engineer pursuant to this Agreement. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may undertake steps to reduce Wastewater System Operation and Maintenance Expenses.

B. Lien on Lands Serviced by Wastewater System. New Mexico law grants the City a lien upon each lot or parcel of land for the charges imposed for water and wastewater

services supplied by the Wastewater System to the owner of such lot or parcel (except as otherwise provided in Section 3-23-6 NMSA 1978, as amended). The City will cause each lien to be perfected in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-5 NMSA 1978 as amended. The City will take all necessary steps to enforce the lien against any parcel of property the owner of which is delinquent for more than six months in the payment of charges imposed for the use of the Wastewater System.

C. Levy of Charges. The City will promptly fix, establish and levy the rates and charges which are required by the Rate Covenant. Unless contrary to any provision of applicable law, any ordinance adopted by the City to fix, establish and levy such rates and charges shall be deemed an administrative or executive matter not subject to any applicable referendum provisions of any City charter or state law. No reduction in any initial or existing rate schedule for the Wastewater System may be made unless:

(1) the City has fully complied with the provisions of Section 4 above for any 12 consecutive months out of the 16 calendar months immediately preceding the reduction of the rate schedule, and

(2) the audit required in subsection (H) of this Section or a separate certificate by an Independent Accountant for or relating to any 12 consecutive months out of the 16 calendar months immediately preceding any reduction discloses that the estimated Wastewater System Net Revenues resulting from the proposed reduced rate schedule would have been sufficient to meet the Rate Covenant in Paragraph B of this Section during the applicable 12-month period.

E. Efficient Operation. The City will maintain the Wastewater System in efficient operating condition and make such improvements, extensions, enlargements, repairs and

betterments to the Wastewater System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for Wastewater System services within the Service Area.

F. Records. So long as the Obligations remain Outstanding, proper books of record and account will be kept by the City, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the Wastewater System. However, pursuant to Section 6-14-10(E) NMSA 1978, records with regard to the ownership or pledge of the Obligations are not subject to inspection or copying.

G. Right to Inspect. Owners of the Obligations, or their duly authorized agents, shall have the right to inspect at all reasonable times all records, accounts and data relating to the Wastewater System, the Pledged Environmental Gross Receipts Tax Revenues and the Net Revenues.

H. Audits. Within 180 days following the close of each Fiscal Year, the City will cause an audit of the books and accounts of the Wastewater System to be made by an Independent Accountant. Each audit of the Wastewater System shall include those matters determined to be proper by the Independent Accountant.

I. Billing Procedure. Bills for wastewater or wastewater services or facilities, or any combination, furnished by or through the Wastewater System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by City ordinance. If permitted by law, if a bill is not paid within the period of time required by City ordinance, wastewater services shall be discontinued as required by City ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

J. Charges and Liens Upon Wastewater System. The City will pay when due from Wastewater System Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the Wastewater System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the Wastewater System. The City will not create or permit any lien or charge upon the Wastewater System or the Wastewater System Gross Revenues except as permitted by this Agreement, or it will make adequate provisions to satisfy and discharge within 60 days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the Wastewater System or the Wastewater System Gross Revenues. However, the City shall not be required to pay or cause to be discharged, or make provision for any tax, assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse affect on owners of the Obligations.

K. Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the Wastewater System, the City will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the Wastewater System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the City, prudent and reasonable taking into account. but not being controlled by, the amounts and types of insurance or self-insured programs provided by municipalities which operate systems such as the Wastewater System. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association

in which the City may have a material interest and of which the City may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the City determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the Wastewater System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem Parity Wastewater System Obligations or be treated as Wastewater System Gross Revenues and used in the manner provided in Section 3.

L. Competing Wastewater System. Unless contrary to any provision of, or required by, applicable law, as long as the Obligations are outstanding, the City will not grant any franchise or license to a competing wastewater utility system, or permit any person, association, firm or corporation to sell similar wastewater utility services or facilities to any consumer, public or private, within the Service Area of the Wastewater System; provided, however, that nothing shall prevent the City from annexing land into its boundaries solely due to the fact that there is a competing utility system or person, association, firm or corporation selling similar wastewater utility services or facilities within or for the land to be annexed. Notwithstanding the foregoing, permits granted to individual homeowners shall not violate this section if the City is in compliance with the Rate Covenant.

M. Alienating Wastewater System. While this Agreement and any Superior Obligations, Parity Obligations or Subordinate Obligations are Outstanding, the City shall not, except as permitted below, transfer, sell or otherwise dispose of the Wastewater System. For

purposes of this Section, any transfer of an asset over which the City retains or regains substantial control shall not, for so long as the City has such control, be deemed a disposition of the Wastewater System.

The City may transfer, sell or otherwise dispose of the Wastewater System only if such transfer, sale or disposition complies with one or more of the following provisions:

(a) The property being disposed of is inadequate, obsolete or worn out; or

(b) The property proposed to be disposed of and all other property of the Wastewater System disposed of during the 12-month period ending on the day of such transfer (but excluding property disposed of under (a) above), will not, in the aggregate, constitute a Significant Portion of the Wastewater System determined as described below and the proceeds are deposited into the Wastewater Fund to be used as described below; or

(c) The City receives fair market value for the property, the proceeds are deposited into the Wastewater Fund to be used as described below and, prior to the disposition of such property, there is delivered a certificate of a Consultant to the effect that notwithstanding such disposition, but taking into account the use of such proceeds in accordance with the expectations of the City as evidenced by a certificate of an Authorized Officer, the Consultant estimates that the City will be in compliance with during each of the five Fiscal Years immediately following such disposition.

For purposes of this Section, the term "Significant Portion" of the Wastewater System means property of the Wastewater System which, if such property had been disposed of by the City at the beginning of the Fiscal Year which includes the month of commencement of the 12-month period referred to in (b) above would have resulted in a reduction in Wastewater System

Net Revenues for such Fiscal Year of more than 4 % when the actual Wastewater System Net Revenues for such Fiscal Year are decreased by the revenues directly attributable to such property of the Wastewater System and increased by the expenses of the City directly attributable to such property of the Wastewater System.

Proceeds of the disposition of assets under (b) or (c) above shall be deposited into the Wastewater Fund and used, within a reasonable period of time, not to exceed three years, to (i) provide additional revenue-producing properties to the Wastewater System, (ii) redeem Parity Wastewater System Obligations or (iii) create an escrow fund pledged to pay all or a part of the Obligations and thereby cause such Obligations to be deemed to be paid as provided in the ordinance or ordinances authorizing the issuance of the Obligations.

No such disposition shall be permitted which would cause the City to be in default of any other covenant contained in this Agreement.

N. Extending Interest Payments. To prevent any accumulation of claims for interest after maturity, except as permitted by this Agreement or Related Documents, the City will not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Obligations. If the time for payment of interest is extended contrary to the provisions of this Section, the installments of interest extended shall not be entitled, in case of an event of default under this Agreement, or Related Documents, to the benefit or security of this Agreement, or Related Documents until the prior payment in full of the principal of and interest on all other Obligations then outstanding.

O. Competent Management. The City shall employ experienced and competent personnel to manage the Wastewater System.

P. Performing Duties. The City will faithfully and punctually perform all duties with respect to the Wastewater System required by State and City laws, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the Wastewater System as required by this Section and the proper segregation and application of the Wastewater System Gross Revenues.

Q. City's Existence. The City will maintain its corporate identity and existence as long as the Obligations remain outstanding unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any Owner. However, the City may annex or de-annex land if the City complies with other applicable covenants in this Agreement.

R. [RESERVED]

S. Other Liens. Other than the Outstanding Superior Obligations and Parity Obligations, including this Agreement, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

T. Duty With Respect to Pledged Revenues. If the statutes or any ordinance which materially affects the Pledged Revenues, or any part of the ordinances, shall ever be held to be invalid or unenforceable, it shall be the duty of the City to immediately take any legally permissable action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of this Agreement, except as provided in paragraph U of this Section.

U. Impairment of Contract. The City agrees that any law or ordinance or resolution of the City in any manner affecting the Pledged Revenues or the Outstanding Obligations, or otherwise appertaining thereto, shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Outstanding Obligations, unless

such Outstanding Obligations have been discharged in full or provision has been fully made therefor, or unless the consent of the required percentage of the registered owners of the Outstanding Obligations is obtained pursuant to the ordinance authorizing the issuance of such Obligations.

V. Limitation on Consolidation of Wastewater System. The City shall not, for so long as any of the Outstanding Obligations are Outstanding, consolidate the Wastewater System with the City's water system.

INTERIM PROMISSORY NOTE
($114,000,000 Wastewater Utility System Loan)

To the New Mexico Environment Department (NMED)
Clean Water State Revolving Loan Fund (CWSRF)
-also known as-
Wastewater Facility Construction Loan Program

FOR VALUE RECEIVED, the **City of Santa Fe** (Borrower) promises to pay the NMED at:

New Mexico Environment Department
Construction Programs Bureau
1190 S. St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87505

or by electronic funds transfer (EFT)

or at such other place as NMED may hereafter designate in writing, the principal amount of

One Hundred Fourteen Million Dollars ($114,000,000)

or so much of that amount as has been paid by NMED to the Borrower pursuant to the terms of the Interim Loan Agreement (Agreement) or any amendment to the Agreement for CWSRF 140 A-F between NMED and the Borrower plus **0.01% project interest annually** from the date of each respective disbursement annually until paid in full. Effective on the execution of the Agreement.

The principal plus interest due, if applicable, and payable on this Note shall be payable as follows: Principal loaned, and the subsequent interest shall be due and paid according to the Final Promissory Note as described.

Repayment Rate and Schedule

Annual principal and interest payments will commence not later than one year after completion of the project and shall be paid in annual installments due on the anniversary of the first annual installment. A Final Promissory Note will be processed and executed, and the Agreement will be amended and executed as a Final Loan Agreement to reflect the final amount loaned by NMED to Borrower. The principal amount of the Final Promissory Note and Agreement, as amended, will be an amount equal to that loaned and paid to Borrower under this Note.

Source of Repayment

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as **Net Wastewater Utility System Revenue**. Except as stated in the Ordinance, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

Assignment

No assignment by NMED of the right to receive payments under this Note shall affect the Borrower's obligations or rights other than to make payments either by EFT or at the address designated by NMED to the Borrower in writing.

Collection and Default

At the option of NMED, any amount paid by NMED to collect amounts due under this Note or to preserve or protect NMED's rights under the Agreement shall become a part of, and bear interest at the interest rate as set forth in the previous REPAYMENT RATE AND SCHEDULE section above and shall become immediately due and payable by the Borrower to NMED upon demand by NMED. Events of default and remedies upon an event of default as described in the Agreement in COVENANTS are incorporated herein by reference.

Prepayment

The Borrower may prepay all or any part of the principal of this Note without penalty. Extra payments, shall, after payment of interest due, be applied to the reduction of principal. After any prepayment of principal, the Borrower shall continue to pay the amounts listed in the Agreement and Final Promissory Note until the entire principal and interest are paid in full.

Authority

This Note is authorized by the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC, and the Borrower's Ordinance No. 2024-6.

This Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall this Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment of the principal or interest on the Agreement or Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and effective as of the date listed below by the Borrower.

_____
Borrower's Authorized Signature

_____
Borrower's Printed Name

_____
Title

_____
Date

State of _

County of

Signed or attested before me on _____ by _____ ,
Date Witness for City of Sant Fe

_____
Notarial Officer Signature

[Official Stamp] Title of Office:

Clean Water State Revolving Loan Fund Interim Loan Agreement

City of Santa Fe

$17,000,000 Water Utility System Loan Agreement

(Made pursuant to Funding Package consisting of $151,000,000 total Loan at 0.01%

The following items are included as part of the funding agreement:

- **Financial Pages and NMED Project Conditions, General Conditions, and Covenants**
- **Covenants and Provisions Applicable to Net Water Utility System Revenue Debt Obligations (Attachment 1)**
- **CWSRF Federal Requirements:**

Applies to All Projects:

- **Super Crosscutters**
- **Generally Accepted Government Accounting Practices**
- **Useful Life**
- **Office of the Inspector General Poster**
- **Cost and Effectiveness**

Applies only to Treatment Works Projects (UV Disinfection and Sewer Line Repair):

- **American Iron and Steel**
- **State Environmental Review Process**
- **Davis-Bacon Wage Rates**
- **Fiscal Sustainability Plan**

NEW MEXICO
ENVIRONMENT DEPARTMENT

INTERIM LOAN AGREEMENT
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF) –also known as-
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM

_Loan Number: CWSRF 140 A-F

Name of Borrower: **City of Santa Fe**

$17,000,000 Water Utility Loan Agreement (made as part of total CWSRF Loan package of $151,000,000, Interest Rate: 0.01%

This Interim Loan Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and the City of Santa Fe (Borrower) becomes effective on the date signed by the NMED. Borrower has enacted Ordinance No. 2024-6 approved on August 14, 2024 (as amended by Ordinance No. 2025-___ approved on _____, 2025), hereinafter referred to as the "Ordinance") which authorizes execution of this Agreement, authorizes the Borrower to accept loan funds from NMED, and irrevocably pledges Net Water Utility System Revenues (Pledged Funds) for the repayment of the loan.

Listed below are agency contacts.

Borrower's Name and Address: City of Santa Fe 200 Lincoln Avenue PO Box 909 Santa Fe, New Mexico 87504-0909	**NMED:** New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, New Mexico 87505 NMENV-cpbinfo@state.nm.us
Borrower's Contact Information: _____, Public Utilities Director (505) 955-4650	**NMED Contact Information:** Stephanie DuBois, Project Engineer (505) 538-5539, stephanie.dubois@env.nm.gov Maria Molina, Program Administrator (505) 670-3876, maria.molina2@env.nm.gov

Jonna Leigh Stack, Project Administrator 505-955-4206 jlstack@santafenm.gov	Rhonda Holderman, Financial Manager, Loans and Grants (505) 363-9396, Rhonda.holderman@env.nm.gov
Emily K. Oster, Finance Director	
(505) 955-6171	
5ekoster@santafenm.gov	

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Borrower's Loan Ordinance
Interim Promissory Note
Proposed Loan Amortization Schedule
Project Description Form

I. Project Description:

A. Project under this agreement includes:

- Nichols Dam Outlet Works Rehabilitation.

B. Borrower agrees that it will implement, in all respects, the project outlined in the attached Project Description, and made a part of this Agreement.

C. Borrower agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended loan agreement.

II. Loan Amount:

NMED agrees to loan funds to the Borrower to pay for approved costs to plan, acquire and construct the Project, in an amount not to exceed: $17,000,000 (Water Utility System Loan Amount) at the **interest rate of 0.01% annually** upon the terms and conditions set forth in this Agreement and the Interim Promissory Note.

Provided the Borrower complies with the Construction Conditions and the CWSRF Requirements below, the loan amount will be available for a period of three **(3) years** from the date of this Agreement. Subject to completion of the Project within the three (3) year construction period, Borrower shall determine the construction schedule for the project in its reasonable discretion.

III. Funding:

A. Project interest accrues during construction at **0.01%** annually from the

date of each disbursement from NMED to the Borrower up to the date the final disbursement request is approved by NMED. The interest accrued during construction, if applicable, shall be payable as follows:

1. Project Interest shall be due and payable in one lump sum within two weeks of receiving notice of final loan amount from the NMED, or

2. Project Interest shall be added to the loan amount disbursed and shall become part of the principal due during the term of the Final Promissory Note.

B. FINANCE COSTS

Finance costs, if applicable, will be determined upon the issuance of the Final Loan Agreement and will be based on the final amount loaned, accrued project interest and agreed upon repayment terms.

C. REPAYMENT TERMS

Repayment terms will be determined upon issuance of the Final Loan Agreement. Any loan term must be substantiated by the Borrower, and the loan term shall not exceed the average economic life of the project as a whole.. Repayment will begin not less than one year after project completion. Repayment need not be based on level payments of principal and interest, but may instead be structured to address Borrower's needs with respect to cash flow, anticipated utility rate increases, and other relevant factors, in Borrower's discretion; provided, that structured repayments shall not be interest-only, but shall include annual amortization of a portion of unpaid principal and payment of interest.

The Borrower may pay off ("Prepay") all or any part of the loan at any time following delivery of written notice to NMED of Borrower's election to Prepay, specifying the principal amount to be prepaid, together with interest thereon accrued to the date of prepayment.

D. ACTUAL LOAN AMOUNT DISBURSED

(i) If the loan amount disbursed is less than the amount in Section III. Loan Amount, then the Final Loan Agreement and the Final Promissory Note shall reflect actual loan disbursements. If the Borrower does not pay the Project Interest within two weeks of receiving notice of final loan amount from the

NMED, then the accrued Project Interest shall be incorporated into the principal amount in the Final Promissory Note.

(ii) At the Borrower's request, NMED will reallocate unused loan amounts for other eligible projects of the Borrower, and will either amend an existing loan agreement and note ("Loan Documentation") or enter into new Loan Documentation with Borrower reflecting the reallocation of unused proceeds for other eligible purposes. Borrower shall be responsible for determining that funds pledged for repayment in connection with such Loan Documentation is from an appropriate source.

(iii) Within the State and Federal requirements applicable to the Loan Agreement, NMED intends to utilize amounts repaid by Borrower hereunder to provide additional loans to Borrower for eligible purposes, at Borrower's request.

E. SECURITY – PLEDGED FUNDS

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as Net Revenues of the Water Utility System owned and operated by the City of Santa Fe, as more specifically defined in the Covenants and Provisions Applicable to Net Water Utility System Revenue Debt Obligations attached hereto as Attachment 1 ("Attachment 1"), which are hereby incorporated in this Agreement.

Except as stated in Attachment 1, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

F. DEFAULT AND LATE CHARGES

Failure by the Borrower to pay the annual payments as set forth in the Final Loan Agreement and Final Promissory Note shall constitute an event of default. Late charges may be assessed at the discretion of NMED. See VI. COVENANTS, Sections H and I for default procedures.

G. DEMAND FEATURE

This Agreement has a demand feature in the event of default and the total principal and interest due shall be paid on demand. See VI. COVENANTS Sections H and I for default procedures.

H. NO DEBT SERVICE RESERVE FUND OR MATCHING REQUIREMENTS.

Borrower shall not be required to establish a debt service reserve fund or to provide matching funds pursuant to this Agreement. In lieu of debt service reserve fund requirements, Borrower shall comply with the Rate Covenant herein. See VI, COVENANTS Section E.

IV. Project Conditions:

A. After the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Borrower's attorney shall provide an opinion satisfactory to NMED that the Borrower is an incorporated entity.

B. Upon execution of this Agreement, the Borrower shall follow the procedures listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Borrower.

1. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Borrower is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB email ptab@acecnm.org.)

2. If these Funds are to be used for engineering and/or other

professional services, the Borrower shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Borrower's staff will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Borrower's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/.

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.

4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.

5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.

6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.

7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.

8. NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans.

8. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.

9. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61- 33-1 et seq.

10. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights- of-way necessary for the completion of work under this agreement.

11. If the Funds are to be used for construction of water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

12. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. The Project will not be considered complete until the work as defined in this Agreement has been fully performed, and finally and unconditionally accepted by the Borrower and NMED.

14. If the Funds are to be used for construction, final disbursement will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

    a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.

    b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower.

    c) A certificate of substantial completion including punch list items.

    d) A letter certifying project acceptance by the Borrower and the Borrower's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval.

    e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met.

    f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.

    g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, contractor(s) may furnish receipts or releases in full an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Borrower or its property might in any way be responsible,

have been paid or otherwise satisfied.

h) A written consent of the surety, if any, to final payment; and

i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.

j) Verification to NMED of FSP and written certification that a FSP is in place.

15. The Borrower must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

16. The Borrower shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.

17. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Borrower shall not proceed with construction of the Project until NMED has approved the Contract Documents.

18. Any change order to the Project construction contract which results in a change to the Project's contract amount, scope of work, or schedule must be approved by NMED.

19. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.

20. The Borrower must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Borrower must certify in writing that this has been done prior to the award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the

Borrower's attorney is required.

21. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.

22. The Borrower shall achieve Project Completion by the end of the loan agreement term. Project Completion means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

23. If the Borrower is unable to complete the project by the loan termination date, the Borrower must notify NMED at least 30 days prior to the loan termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Borrower shall refund any Funds disbursed to the Borrower by NMED within ninety (90) days of termination.

V. General Conditions:

A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations,
20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6 –20.7.7 NMAC.

B. Pursuant to the Ordinance of the Borrower, the Borrower is authorized to enter into this Agreement and the Final Loan Agreement and to execute and deliver an Interim Promissory Note and Final Promissory Note. The terms of the Ordinance and Interim Promissory Note are incorporated as part of this Agreement as though fully set forth in this Agreement.

C. For the purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means only that plans are complete. NMED will bring to the Borrower's attention any obvious defects in the Project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the Borrower and its contractors. Any questions raised by NMED shall be resolved exclusively by the Borrower and its contractors, who shall remain responsible for the completion and success of the Project.

D. The Borrower warrants, represents and agrees that it, and its contractors, subcontractors, employees, and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.

E. If the Borrower seeks additional funding from any other entity for the Project, the Borrower agrees that the Borrower is solely responsible for satisfying any requirements arising as a result of funding from that other entity.

F. The Borrower warrants that the internal financial statements provided to NMED by the Borrower for approval of the loan do not contain false material statements, representations, certifications, or omissions of material fact.

G. The Borrower shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.

H. The proceeds of the loan shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the loan include but are not limited to paying administrative expenses (including applications for funding), costs of Borrower employees, late fees, interest, or penalties. Those costs shall be paid by the Borrower.

I. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and related to the efficient achievement of the objectives of this Agreement. The Borrower must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and may reclaim improperly documented reimbursement until the Borrower provides sufficient justification. NMED may not disburse any loan funds if the Borrower fails to adhere to the schedule described in Section IV. above.

J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.

K. The Borrower agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.

L. The Borrower agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau will be given free access to the Project sites.

M. The Borrower agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.

N. The obligations of the Borrower under the Agreement are the special limited obligations of the Borrower as set forth in the Agreement and the Note. The Agreement and the Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement and Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment due on the Agreement or Note.

O. The Borrower agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.

P. The loan will not be used by the Borrower on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, §§ 47-5-1 to 47-5-8.

Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.

R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Borrower shall conduct an audit of the financial records pertaining to the Project.

VI. Covenants:

Attachment 1 (Covenants and Provisions Applicable to Net Water Utility System Revenue Debt Obligations ("System Covenants")) is hereby incorporated hereinbelow and shall be controlling in the event of inconsistency between the System Covenants and the following covenants, but only to the extent of such inconsistency.

A. (i) Disbursements (payment of loan funds) to the Borrower made pursuant to the Agreement will be available on and after the date of the execution of the Agreement and Note if the Borrower is compliant with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Borrower to plan, design, construct or acquire the Project, or any phase thereof. The Borrower shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Borrower. All disbursements to the Borrower will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Borrower within ninety (90) days after the liability of the Borrower was incurred as evidenced by the date of the invoice for which disbursement is being requested. NMED shall use commercially reasonable efforts to disburse loan proceeds, or to notify Borrower that the disbursement request is incomplete or otherwise unsatisfactory, within 10 business days after receiving a disbursement request from Borrower.

(ii) NMED will compensate Borrower for the actual and reasonable costs of employing personnel (which may be a current employee of Borrower) tasked with assisting Borrower in preparing, documenting and submitting disbursement requests, and working with NMED to resolve issues relating thereto ("Disbursement Request Administration"). Reimbursement of the Borrower by NMED for the Borrower's actual and reasonable costs of employing such personnel is conditioned on the Borrower providing reasonably detailed, contemporaneous time records describing the activities of such personnel in connection with Disbursement Request Administration as part of each disbursement request. [Such costs [will] [will not] be paid from loan proceeds.]

B. The Borrower shall not sell, lease, or transfer any property related to the Project except as permitted by the Ordinance, as amended, and supplemented.

C. The Borrower shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance as adopted at the time of execution of the Agreement.

D. The Borrower hereby irrevocably agrees that the Borrower has fixed and collected, or will fix and collect, adequate rates, fees, and other charges for the use of the System (as defined in the Ordinance) which will be sufficient to satisfy the Agreement and the Note.

E. If the pledged funds shall prove insufficient to produce the Repayments set forth herein and in the Interim and Final Promissory Note, the Borrower agrees to adjust and increase such rates, fees, and charges in the manner authorized by law to provide funds sufficient to produce the repayment of the loan set forth herein and in the Interim and Final Promissory Note, as set forth in the Rate Covenant in the System Covenants.

F. The Borrower shall not provide any free services of the Water Utility System. The Borrower shall, to the full extent permitted by law, collect payment for water services provided. The Borrower shall notify NMED should delinquent users impact their ability to service this agreement as defined.

G. The Borrower shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.

H. The following shall constitute an event of default under the Agreement:

1. The failure by the Borrower to pay the annual payment on the repayment of the loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at maturity or otherwise or

2. Default by the Borrower in any of its covenants or conditions set forth under the Agreement (other than a default set forth in the previous clause of this section) for 60 days after NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

I. Upon occurrence of an event of default:

1. The entire unpaid amount of the Agreement and Interim and Final Promissory Note may be declared by the NMED to be immediately due and payable, and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note from the Pledged Funds, either immediately or in the manner required by NMED in its declaration.

2. If the event of default is under clause one of Subsection H, NMED is authorized to set water user rates in the area of the Borrower's jurisdiction in order to provide sufficient money for repayment, on scheduled due dates of the loan and proper operation and maintenance of the Water Utility System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System shall be identified through a rate- setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.

3. If default by the Borrower is of covenants or conditions required under the Agreement, the Borrower may be required to refund the amount of the loan disbursed to the Borrower from NMED.

4. NMED shall have no further obligation to make disbursements to the Borrower under the Agreement and may pursue any other appropriate remedies.

J. NMED retains the right to seek enforcement of the terms of the Agreement. If the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for

Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

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

L. This Agreement shall be binding upon and inure to the benefit of the Borrower, NMED and their respective successors. The rights and obligations under the Agreement and Interim and Final Promissory Note may not be assigned by the Borrower.

M. No change shall be made to the Agreement or the Interim and Final Promissory Note except in writing signed by NMED and the Borrower.

CWSRF FEDERAL REQUIREMENTS: APPLIES TO ALL PROJECTS

New Mexico CWSRF Loan Agreement Provision LA 1: Anti-Discrimination Laws (Super Cross- Cutters)

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Civil Rights Laws (i.e., Super Crosscutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability, or age, in programs or activities receiving federal financial assistance. All recipients of CWSRF financial assistance must agree, and required their contractors and subcontractors to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

New Mexico CWSRF Loan Agreement Provision LA2: Generally Accepted Governmental Accounting

All recipients of CWSRF financial assistance (Assistance Recipients) are required to comply with the following provisions:

Section 602(b)(9) of the Federal Water Pollution Control Act (FWPCA) states:

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets

The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB. CWSRF assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

Pursuant to Section 602(b)(9) of the FWPCA, all CWSRF Assistance Recipients must agree to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), using standards relating to the reporting of infrastructure assets.

New Mexico CWSRF Loan Agreement Provision LA13: Useful Life Requirement

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Section 603(d)(1)(A) of the Clean Water Act (as amended) restricts the terms of CWSRF loans to the lesser of 30 years or the useful life of the project. All applicants for CWSRF financial assistance agree to provide an engineer's estimate of the useful life of project components to be funded by the CWSRF.

New Mexico CWSRF Loan Agreement Provision LA14 Office of Inspector General Posting

The US Environmental Protection Agency requires that contracts exceeding $1,000,0000 prominently display the Office of the Inspector General Hotline poster within contractor work areas and facilities where work is performed.

Posters may be obtained at: https://www.epa.gov/office-inspector-general/poster-report-fraud-waste-and-abuse-epa-oig-hotlineThe parties have executed this Agreement on the dates set forth by their respective names.

LA 18 Cost and Effectiveness—Government Requirement

Under the Federal Water Pollution Control Act (FWPCA) section 602(b)(13), the CWSRF program requires that all assistance recipients certify that they have conducted the studies and evaluations described in 602(b) (13 (A) and (B) herein referred to collectively as a cost and effectiveness analysis. The statute requires that a cost and effectiveness analysis involve, at a minimum:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for conducting the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, considering—
    - the cost of constructing the project or activity.
    - the cost of operating and maintaining the project or activity over the life of the project or activity; and
    - the cost of replacing the project or activity.

CWSRF FEDERAL REQUIREMENTS: APPLIES ONLY TO TREATMENT WORKS PROJECTS

(UV Disinfection and Sewer Line Repair):

AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

The Federal Water Pollution Control Act (P.L. 92-500) Section 608 requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The Act states:

> SEC. 608. REQUIREMENTS.
> *(a)* IN GENERAL.—Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.
> *(b)* DEFINITION OF IRON AND STEEL PRODUCTS.—In this section, the term `iron and steel products' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.
> *(c)* APPLICATION.—Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—
>
> (1) applying subsection (a) would be inconsistent with the public interest.
> (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
> (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
>
> *(d)* WAIVER.—If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.
> *(e)* INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.
> *(f)* MANAGEMENT AND OVERSIGHT.—The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.
> *(g)* EFFECTIVE DATE.—This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that

agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

AMERICAN IRON AND STEEL (AIS) GUIDANCE

The following guidance excerpt has been provided from EPA:

(Complete guidance may be downloaded from: https://www.epa.gov/cwsrf/state-revolving-fund- american-iron-and-steel-ais- requirement)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:
Lined or unlined pipes or fittings;
Manhole Covers.
Municipal Castings (defined in more detail below),
Hydrants.
Tanks;
Flanges.
Pipe clamps and restraints; Valves.
Structural steel (defined in more detail below);
Reinforced precast concrete; and
Construction materials (defined in more detail below).

12) What does the term 'primarily iron or steel' mean?

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem coupling, valve, seals, etc.).
However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product

be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does 'produced in the United States' mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of 'municipal castings?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches;
Ballast Screen.
Benches (Iron or Steel);
Bollards.
Cast Bases.
Cast Iron Hinged Hatches, Square and
Rectangular; Cast Iron Riser Rings.
Catch Basin Inlet;
Cleanout/Monument Boxes;
Construction Covers and Frames;
Curb and Corner Guards.
Curb Openings.
Detectable Warning Plates;
Downspout Shoes (Boot,
Inlet).
Drainage Grates, Frames and Curb Inlets;
Inlets.
Junction
Boxes.
Lampposts.
Manhole Covers, Rings and Frames, Risers,
Meter Boxes.
Service Boxes.
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings.
Trash
receptacles;
Tree Grates.
Tree Guards;
Trench Grates;
and
Valve Boxes, Covers and Risers.

20) What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical

components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters,
heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

<u>Certification and Compliance</u>

NMED Form #C4 "American Iron and Steel (AIS) Certification" must be executed and included in the bid package. Failure to complete the certification will result the bid being returned. The contractor will

supply to the loan recipient manufacturers' certifications for each iron and steel item documenting/asserting that all manufacturing processes occurred in the United States. Such certifications will be submitted with shop drawings.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework is described in the guidance document found at: https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-waiver-process

Approved and denied waivers may be reviewed at: https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-approved-project-waivers and https://www.epa.gov/cwsrf/american-iron-and- steel-requirement-withdrawn-or-denied-waivers

De Minimis Materials Waiver

The EPA has granted a nationwide waiver of the AIS requirements of the Consolidated Appropriations Act under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible infrastructure projects. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the total materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the total materials used in and incorporated into a project. Contractors who wish to use this waiver should determine the costs of all items installed or supplied for the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files and must summarize the

items in monthly draw requests to the owner: the total cost of all materials, the total cost of "incidental" materials, and the calculations by which they determined the percentage of incidental products installed or supplied for the project. None of the products specifically listed as "Covered Iron and Steel Products" are incidental, nor are the products identified in detail in the technical specifications.

New Mexico CWSRF Loan Agreement Provision LA9 Environmental Review Requirements

The Federal Water Pollution Control Act section 511(c)(1) applies the National Environmental Policy Act (NEPA) to assistance for the construction of treatment works. All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding, must undergo an environmental review following the procedures in NMED's State Environmental Review Process.

Assistance recipients ("sub-recipients") for CWSRF-funded treatment works projects are required to comply with Section 513 of the Federal Water Pollution Control Act (P.L. 92-500, as amended by the Water Resources Reform and Development Act of 2014) requiring all laborers and mechanics employed by contractors working on treatment works to be paid prevailing wages as determined by the Secretary of Labor. It is considered a Davis-Bacon related Act.

DAVIS-BACON REQUIREMENT (GOVERNMENTAL ENTITIES)

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/ weekly to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(c) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify

that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2014 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site,

www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for

this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work

they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until

an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii)The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB

prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub-recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

DAVIS-BACON REQUIREMENT (NON-GOVERNMENTAL ENTITIES)

Under these terms and conditions, the sub-recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Water Resource Reform and Development Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients must obtain proposed wage determinations for specific localities at https://beta.sam.gov/. After the Sub-recipient obtains its proposed wage determination, it must submit the wage determination to the **New Mexico Environment Department Construction Programs Bureau** ((505)-469-3459) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(d) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the

contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014

(b) Water Resource Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any

other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the

Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer

and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii)Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. **4. Contract Provision for Contracts in Excess of $100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub- recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

New Mexico CWSRF Loan Provision LA15 Fiscal Sustainability Plan

	Fiscal Sustainability Plan Requirement	LA15

The 2014 Clean Water Act amendments require recipients of CWRF loans for projects involving a publicly owned treatment works to certify that they have developed and implemented a Fiscal Sustainability Plan (FSP) or another plan that meets minimum requirements, or that they will prepare an FSP. The minimum required elements for an FSP are listed in Section 603(d)(1)(E) of the Clean Water Act. Loan recipients shall develop and implement a FSP that includes the following:

- An inventory of critical assets that are part of the system. Critical assets are those that are necessary for sustained system performance.
- An evaluation of the condition and performance of critical assets.
- A plan for maintaining, repairing and replacing critical assets and for funding those activities.
- An evaluation and implementation plan for water and energy conservation.

The FSP requirement applies to all publicly owned treatment works construction or design/ construction projects funded in-part or in-full of State Revolving Fund (SRF) loans. The FSP must cover the entire project for which SRF funding is provided.

At the completion of the project, the loan recipient can:

Certify that a Fiscal Sustainability Plan (FSP) has been developed and implemented that meets the minimum required elements listed above. The FSP certification statement must be submitted before a final loan agreement is executed. The FSP will be available for NMED review during a site visit or inspection.

Agree to develop and implement a Fiscal Sustainability Plan (FSP) that will meet the minimum required elements listed above. The certification statement must be submitted before a final loan agreement is executed. The FSP must be completed prior to final disbursement. The FSP will be available for NMED review during a site visit or inspection.

By executing this Agreement, the undersigned represents authorization to act on behalf of the Recipient.

BY:

_____

Signature of duly authorized Recipient
Official City of Santa Fe

_____

Print Name

_____

Title

_____

Date

Issued and administered by:

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

BY: _____

Constructions Programs Bureau, Bureau Chief
Signed pursuant to February 19, 2024, Secretary of Environment Delegation Order

ATTACHMENT 1

COVENANTS AND PROVISIONS APPLICABLE
TO NET WATER UTILTY SYSTEM OBLIGATIONS ('SYSTEM OBLIGATIONS")

Bracketed section references refer to the corresponding sections in Ordinance No. 2016-19, adopted by the Governing Body of the City of Santa Fe on May 1, 2016 (the "Master Ordinance").

Section 1. Definitions.

"Agreement Debt Service Fund" means the fund established and maintained by the City for the deposit of Pledged Revenues in amounts sufficient to make timely payments of the Debt Service Requirements of this Agreement.

"Authorized Officer" means the City's Mayor, Manager, Finance Director and Treasurer, or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time.

"Finance Director" or his or her successor in function, provided that for purposes hereof, the designation of any successor in title by the City Manager, if given in writing, shall be conclusive.

"Consulting Engineer" means any registered or licensed professional engineer or firm of engineers or Independent Accountant, entitled to practice and practicing as such under the laws of the State, retained and compensated by the City but not in the regular employ of the City; but, as to any construction drawings and specifications prepared for the System by City employees under the supervision of the City Engineer, this term may include the City Engineer.

"Debt Service Requirements" for any given period, means the sum of: (a) the amount required to pay the interest becoming due on the applicable System Bonds during that period, or

to make reimbursements for payments of interest; and (b) the amount required to pay the principal or Accreted Value becoming due on the applicable System Bonds during that period, whether at maturity, the Accreted Term Date or upon mandatory sinking fund redemption dates, or to make reimbursements for payments of that principal or Accreted Value. For purposes of calculating the maximum annual Debt Service Requirements, the following assumptions shall be used:

(a) in determining the principal due in each year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made on System Bonds in accordance with any amortization schedule established by Ordinance, the Supplemental Ordinance or Related Documents setting forth the terms of such System Bonds, including, as a principal payment, the Accreted Value of any Capital Appreciation Bonds maturing or scheduled for redemption in such year; in determining the interest due in each year, interest payable at a fixed rate shall (except to the extent subsection (b), (c), (d), (e) or (f) of this definition applies) be assumed to be made at such fixed rate and on the required payment dates;

(b) if all or any portion or portions of an Outstanding series of System Bonds constitute Balloon Indebtedness, or if all or any portion or portions of a series of System Bonds then proposed to be issued would constitute Balloon Indebtedness, then, for purposes of determining Debt Service Requirements, each maturity which constitutes Balloon Indebtedness shall, unless provision (c) of this definition then applies to such maturity, be treated as if it were to be amortized over a term of 20 years commencing in the year the stated maturity of such Balloon Indebtedness occurs and with substantially level annual debt service payments; the interest rate used for such computation shall be that rate determined by a Consultant to be a reasonable market rate for 20-year fixed-rate

System Bonds issued under the Master Ordinance on the date of such calculation, with no credit enhancement and taking into consideration whether such System Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to any series of System Bonds only a portion of which constitutes Balloon Indebtedness, the remaining portion shall be treated as described in (a) above or such other provision of this definition as shall be applicable and, with respect to any series or that portion of a series which constitutes Balloon Indebtedness, all payments of principal and interest becoming due prior to the year of the stated maturity of the Balloon Indebtedness shall be treated as described in (a) above or such other provision of this definition as shall be applicable;

(c) any maturity which constitutes Balloon Indebtedness as described in provision (b) of this definition and for which the stated maturity date occurs within 12 months from the date such calculation is made, shall be assumed to become due and payable on the stated maturity date and provision (b) above shall not apply thereto unless there is delivered to the entity making the calculation a certificate of an Authorized Officer stating that the City intends to refinance such maturity and stating the probable terms of such refinancing and that the debt capacity of the City is sufficient to successfully complete such refinancing; upon the receipt of such certificate, such Balloon Indebtedness shall be assumed to be refinanced in accordance with the probable terms set out in such certificate and such terms shall be used for purposes of calculating Debt Service Requirements, provided that such assumption shall not result in an amortization period longer than or an interest rate lower than that which would be assumed under provision (b) above;

(d) if any of the Outstanding series of System Bonds constitute Tender Indebtedness or if System Bonds then proposed to be issued would constitute Tender Indebtedness, then, for purposes of determining Debt Service Requirements, Tender Indebtedness shall be treated as if the principal amount of such System Bonds were to be amortized over a term of 25 years commencing in the year in which such series is first subject to tender and with substantially level annual debt service payments; the interest rate used for such computation shall be that rate determined by a Consultant to be a reasonable market rate for 25-year fixed-rate System Bonds issued under the Master Ordinance on the date of such calculation, with no credit enhancement and taking into consideration whether such System Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to all principal and interest payments becoming due prior to the year in which such Tender Indebtedness is first subject to tender such payments shall be treated as described in (a) above unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date shall be determined as provided in (e) or (f) below, as appropriate;

(e) if any Outstanding System Bonds constitute Variable Rate Bonds (except to the extent subsection (b) or (c) relating to Balloon Indebtedness or (d) relating to Tender Indebtedness applies), the interest rate on such System Bonds and the interest rate for funding any Reserve Requirement for such Variable Rate Bonds shall be assumed to be the lesser of the 30-year Revenue Bond Index (published by The Bond Buyer no more than two weeks prior to date of sale), as certified by the City's financial advisor, the Purchaser of the System Bonds or other investment banker, as designated by the City from time to time or the maximum allowable rate permitted under Section 6.03(b)(i) of the Master

Ordinance. The prospective computations of interest payable on Variable Rate Bonds relating to the issuance of additional Parity Bonds required by Section 5 [Article XXIV] shall be as described therein. The prospective computations of interest payable on Variable Rate Bonds required by the Rate Covenant shall be made on the lesser of the maximum short-term rate prevailing in the preceding twelve months or the maximum allowable rate permitted under Section 6.03(b)(i) of the Master Ordinance;

(f) in any computation relating to the issuance of additional System Bonds or the Rate Covenant, there shall be deducted from the computation of the Debt Service Requirements amounts and investments (unless funded by Net Revenues during the applicable period) which are irrevocably committed to make designated payments on System Bonds during the applicable period, including, without limitation, money on deposit in a Debt Service Account for a series of System Bonds, amounts representing capitalized interest for a series of System Bonds and amounts on deposit in an escrow account irrevocably committed to make designated payments on System Bonds during the applicable period;

(g) interest or principal being paid for reimbursements of Debt Service Requirements made pursuant to a Credit Facility, if such obligations rank on parity with the obligation to pay System Bonds, or if a System Bond is a Bank Bond on the date of computation, shall be considered in the computation of Debt Service Requirements; and

(h) should the City enter into an interest rate swap contract or its equivalent with respect to all or a portion of any series of System Bonds, the amount of interest required to be paid with respect to that series shall be the interest rate paid by the City under its interest rate swap contract, so as to properly reflect the actual savings of the swap.

Any termination or similar fees which may become payable by the City pursuant to such swap contract or its equivalent shall not be considered in the computation of Debt Service Requirements. Such swap contract or its equivalent shall be approved by the New Mexico Board of Finance or any other governmental entity if required by State law.

"Gross Revenues" means all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the City, or any municipal corporation or agency succeeding to the rights of the City, from the System and from the sale and use of water or water facilities furnished to the inhabitants in the Service Area. Such term also includes:

(a) All income derived from the investment of any money in the Acquisition Fund, Income Fund, Debt Service Fund, Reserve Fund and Rate Stabilization Fund and from surplus Net Revenues;

(b) Money released from the Rebate Fund to the City;

(c) Money released from the Rate Stabilization Fund to the extent that the amount released is used to pay Operation and Maintenance Expenses or Debt Service Requirements on System Bonds in the year released;

(d) Property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the System; and

(e) Such other amounts that may be designated as Gross Revenues in a Supplemental Ordinance.

Gross Revenues do not include:

(a) any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;

(b) gross receipts taxes, other taxes and/or fees collected by the City and remitted to other governmental agencies; and

(c) condemnation proceeds or the proceeds of any insurance policy, except for (d) above and any insurance proceeds derived in respect of loss of use or business interruption.

"Historic Test Period" means any period of 12 consecutive months out of the 18 calendar months next preceding the delivery of additional Parity Bonds pursuant to Section 24.02.

"Income Fund" means the "City of Santa Fe Water Utility System Gross Income Fund" which is authorized to be continued in Section 2 hereof [Article XVII] .

"Independent Accountant" means (i) the State Auditor and any accountant working under the supervision and control of the State Auditor, and (ii) any certified public accountant, registered accountant or firm of accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City who (a) is, in fact, independent and not under the domination of the City, (b) does not have any substantial interest, direct or indirect, with the City, and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Master Ordinance" means Ordinance No. 2016-19, amending and restating Ordinance No. 2006-47, and as amended or supplemented from time to time in accordance with its terms.

"Moody's" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation does

not provide a rating for a series of System Bonds, "Moody's" shall be deemed to refer to any other nationally recognized securities rating organization rating that series of System Bonds.

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

"Net Revenues" or "Pledged Revenues" means Gross Revenues after deducting Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the System;

(b) insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay Debt Service Requirements on System Bonds) for Credit Facilities;

(d) Expenses other than Expenses paid from the proceeds of System Bonds;

(e) the costs of audits of the books and accounts of the System;

(f) amounts required to be deposited in the Rebate Fund;

(g) salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the City's general fund, liabilities incurred by the City as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Obligations" means bonds, notes or any other instrument which evidences a borrowing or other obligation of the City, including Qualified Exchange Agreements, secured by Pledged Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

"Outstanding Obligations" means, collectively, Outstanding Superior Obligations and Outstanding Subordinate Obligations.

"Outstanding Subordinate Obligations" or "Outstanding Parity Subordinate Obligations" means Obligations with a lien on Net Revenues subordinate to the lien thereon of Outstanding Superior Obligations, and on parity with the lien thereon of this Agreement, and include (1) New Mexico Finance Authority Drinking Water State Revolving Loan Fund Loan Agreement dated May 16, 2008 in an original principal amount of $15,150,000, as amended by First Amendment dated June 10, 2016 (the "2008 NMFA Loan"); (2) New Mexico Finance Authority Drinking Water State Revolving Loan Fund Loan and Subsidy Agreement dated May 3, 2013 in an original principal amount of $5,050,000, as amended by First Amendment dated June 10, 2016 (the "2013 NMFA Loan"), (3) this Agreement, and (4) any other Obligations issued from time to time with a lien on Net Revenues on parity with the lien thereon of this Agreement.

"Outstanding Superior Obligations" or "Parity Bonds" means the Series 2016 Bonds and other System Obligations issued with a lien on Net Revenues on parity with the lien thereon of the Series 2016 Bonds.

"Outstanding Super Subordinate Obligations" means the 2007 Water Trust Board Loan Agreement maturing in 2027, the 2009 Water Trust Board Loan maturing in 2029, the 2010 Water Trust Board Loan WTB-170 maturing in 2030, the 2011 Water Trust Board Loan WTB-202 maturing in 2031, and the 2011 Water Trust Board Loan WTB-203 maturing in 2031.

"Pledged Revenues" means Net Revenues.

"Rate Covenant" means the covenant in Section 26.03(b) relating to charging rates for use of the System to pay Debt Service Requirements.

"Rate Stabilization Fund" means the Rate Stabilization Fund for System Bonds established in Article XVII of the Master Ordinance and continued in Section 2(h) hereof.

"Rebate Fund" means the Rebate Fund for System Bonds established in Article XVII of the Master Ordinance and continued in Section 2(f) hereof.

"Related Documents" means, in connection with Outstanding Obligations, the Pricing Certificate, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the Preliminary Official Statement, the Official Statement, and any other document or agreement containing an obligation of the City as may be required in connection with the issuance of the Obligations.

"Replacement Fund" means the Water System Replacement Fund established in Article XVII of the Master Ordinance and continued in Section 2(g) hereof and the applicable section of other ordinances in which Outstanding Obligations were authorized.

"Subordinated Bonds" means all bonds and other obligations of the City hereafter issued with a lien on the Net Revenues subordinate to the lien of Parity Bonds on the Net Revenues.

"Supplemental Ordinance" means, except with respect to the Series 2016 Bonds which are authorized and issued pursuant to the terms of the Master Ordinance, an ordinance and all resolutions, amendments and supplements relating thereto of the Council adopted prior to the initial issuance and delivery of each series of System Bonds, authorizing the issuance of a series of System Bonds, the sale and administration thereof and approving specific terms with respect to that series of System Bonds.

"System" means the municipally owned public utility designated as the City's water utility system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the water utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the City designated by the Council as part of the water utility system, whether situated within or without the limits of the City.

"System Bonds" means the Series 2016 Bonds, additional Parity Bonds, Subordinated Bonds and other similar obligations payable solely or primarily from Net Revenues which may from time to time be issued pursuant to the Master Ordinance.

"2025 NMED Acquisition Account" means the account so-named and established in Section 2(b) hereof.

"2025 NMED Debt Service Account" means the account so-named and established in Section 2(c) hereof.

"2025 NMED Interest Account" means account so-named and established in Section 2(c) hereof.

"2025 NMED Loan" means the Water State Revolving Fund loan made by NMED to the City in a maximum principal amount of $17,000,000, as initially evidenced by this Agreement and Interim Note.

"2025 NMED Principal Account" means account so-named and established in Section 2(c) hereof.

Section 2. Funds and Accounts.

(a) [Section 17.01] Income Fund. The City shall continue the Income Fund as a separate, distinct and segregated fund. As long as any System Bonds are Outstanding, all Gross Revenues shall continue to be set aside and credited to the Income Fund.

(b) [Section 17.02] Acquisition Fund. The Acquisition Fund established pursuant to Ordinance as a separate and distinct fund of the City to be maintained and controlled by the City or its designee is hereby continued. The City hereby establishes the 2025 NMED Acquisition Account.

(c) [Section 17.03] Debt Service Fund. The City shall continue the Debt Service Fund as a separate and distinct fund of the City to be maintained and controlled by the City or its designee for the payment of the Debt Service Requirements on Parity Bonds and, if applicable, proceeds of Parity Bonds to be used for the payment of Parity Bonds. The City hereby establishes the 2025 NMED Debt Service Account, the 2025 NMED Interest Account, and the 2025 NMED Principal Account.

(d) [Section 17.04] Reserve Fund. The City shall continue the Reserve Fund as a separate and distinct fund to be maintained and controlled by the City or its designee for the

purposes described in Section 18.03 of Ordinance. The City shall establish a separate Reserve Account in the Reserve Fund for each series of Parity Bonds for which there is a Reserve Requirement. No Reserve Account is established for the 2025 NMED Loan.

(e) [Section 17.06] Subordinate Lien Funds and Accounts. The City may establish separate and distinct funds and accounts to be maintained and controlled by the City or its designee to pay Debt Service Requirements on, and to fund Reserve Accounts for, Subordinated Bonds.

(f) [Section 17.07] Rebate Fund. The City shall continue the Rebate Fund as a special and separate fund to be maintained and controlled by the City or its designee. The City shall, to the extent that rebate payments may be required to be made pursuant to Section 148(f) of the Code, establish within the Rebate Fund a separate account for each series of System Bonds. No Rebate Account is established for the 2025 NMED Loan.

(g) [Section 17.08] Replacement Fund. The City shall continue the Replacement Fund as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 3([f])) [Section 18.06].

(h) [Section 17.09] Rate Stabilization Fund. The City shall continue the Rate Stabilization Fund as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 3([g]) [Section 18.07].

(i) [Section 17.10] Operation and Maintenance Fund. The City shall continue the Operation and Maintenance Fund as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 3(a) [Section 18.01].

(j) [Section 17.11] Other Funds. Other funds and accounts relating to any series of System Bonds, including escrow funds and accounts if System Bonds are to be refunded,

may be established by the Council or an officer of the City to be controlled and maintained by the City or its designee.

Section 3. [ARTICLE XVIII] Administration of Income Fund and Other Funds and Accounts.

(a) [Section 18.01] Use of Gross Revenues. As long as any System Bonds are Outstanding, all Gross Revenues shall be deposited in the Income Fund and transferred from that Fund to the following funds and accounts or for payment of the following amounts in the order listed:

(1) [18.01(a)] Operation and Maintenance Expenses. A sufficient amount of Gross Revenues shall be set aside each month into the Operation and Maintenance Fund to be used to pay the current Operation and Maintenance Expenses as they become due.

(2) [18.01(b)] Debt Service Accounts for Parity Bonds. Net Revenues shall be transferred to the Debt Service Accounts established for each series of Outstanding Parity Bonds in approximately equal amounts each month to provide an amount sufficient to pay Debt Service Requirements on the Outstanding Parity Bonds as they become due.

(3) [18.01(c)] Reserve Account. Net Revenues shall be transferred to the Reserve Account for each series of Parity Bonds with a Reserve Requirement each month to the extent that deposits are required to be made as a result of any draws on a Reserve Account Insurance Policy or deficiency in the Reserve Requirement for a series of Parity Bonds.

(4) [18.01(d)] Subordinated Bonds. Net Revenues shall be transferred to such funds and accounts as may be established by Supplemental Ordinance with respect to one or more series of Subordinated Bonds and used to pay Debt Service Requirements on Subordinated Bonds and to fund any Reserve Requirement for Subordinated Bonds.

(5) [18.01(e)] Replacement Fund. At the option of the City, Net Revenues may be transferred to the Replacement Fund to be used for the purposes stated in Section 3(a)(6) hereof [Section 18.01(f)].

(6) [18.01(f)] Rate Stabilization Fund. At the option of the City, Net Revenues may be transferred to the Rate Stabilization Fund to be used for the purposes stated in Section 3(a)(7) hereof [Section 18.01(f)].

(7) [18.01((g)] Surplus Net Revenues. Net Revenues shall be retained in the Income Fund or used for any other lawful System purpose including, but not limited to, redeeming or purchasing System Bonds or paying costs and expenses of the City relating to the administration of System Bonds but shall not be transferred to the general fund of the City except for Operation and Maintenance Expenses owed by the System to the City and except for taxes, payments in lieu of taxes, franchise fees, surcharges, assessments and other municipal or governmental charges of the City lawfully levied or assessed upon the System.

(8) [18.01(h)] Accumulation of Revenues. Gross Revenues need not be retained for any use or in any fund or account described in this Section 3(a) [Section 18.01] in excess of the Gross Revenues required for any current use or deposit. For the purposes of this Section 3(a)(8), the term current shall mean the month during which the Net Revenues are being distributed and the immediately following period until the next payment date for Debt Service Requirements on System Bonds.

(b) [Section 18.02] Debt Service Fund. Net Revenues shall be transferred in approximately equal amounts each month to each Debt Service Account sufficient to pay when due the Debt Service Requirements on each series of Parity Bonds.

(1) [18.02(a)] Except as stated in Section 3(d) [Section 18.04] or required by the Supplemental Ordinance relating to a series of Parity Bonds, approximately equal monthly deposits of Net Revenues shall be made to each Debt Service Account beginning six months before each Interest Payment Date for any Outstanding Parity Bonds in order to make the next payment of interest on each such System Bond when due. However, if the first Interest Payment Date for a series of System Bonds is less than seven months after the date of the original issuance of that series of System Bonds, equal monthly deposits of Net Revenues before the first Interest Payment Date shall begin in the first full month following the date of issuance of that series of System Bonds.

(2) [18.02(b)] Except as stated in Section 3(d) [Section 18.04] or as required by the Supplemental Ordinance relating to a series of System Bonds, substantially equal monthly deposits of Net Revenues shall be made to each Debt Service Account beginning 12 months before each principal or Accreted Value payment date for any Outstanding Parity Bonds in order to make the next scheduled payment of principal or Accreted Value on each such System Bond when due whether at maturity on a mandatory sinking fund redemption date or other Accretion Term Date. However, if the first principal payment date for a series of System Bonds is less than thirteen months after the date of the original issuance of that series of System Bonds, equal monthly deposits of Net Revenues before the first principal payment date shall begin in the first full month following the date of issuance of that series of System Bonds. Principal payments include scheduled payments at maturity, by mandatory sinking fund installment or otherwise scheduled payments of principal. Accreted Value payments include scheduled payments on the Accretion Term Date, if any, and as otherwise stated in the applicable Supplemental Ordinance.

If in the month immediately preceding any payment date for the Series 2016 Bonds and any series of Parity Bonds, the City determines that there are not sufficient funds accumulated in a Debt Service Account to pay the amount becoming due on such series of System Bonds on the payment date, the City shall promptly deposit any available Net Revenues in that Debt Service Account in an amount equal to the deficiency. If, prior to any payment date for a series of System Bonds, there has accumulated in the applicable Debt Service Account the entire amount necessary to pay the amount becoming due on those System Bonds on that payment date, no additional Net Revenues need be deposited in that Debt Service Account prior to that payment date. In making the determinations permitted by this Section 3(b)(2), the City may take into account the amount on deposit in any other fund or account or escrow relating to the applicable series of System Bonds irrevocably set aside for the next payment of those System Bonds.

Unless otherwise stated in the Supplemental Ordinance relating to any series of Parity Bonds, amounts deposited in any Debt Service Account shall be applied first to the payment of interest and then to pay or satisfy any sinking fund requirements for the payment of principal.

Except as provided in Section 3(d) [Section 18.04], money in a Debt Service Account shall be used only to pay the Debt Service Requirements on any series of System Bonds for which the Debt Service Account was created. Transfers of amounts equal to the Debt Service Requirements shall be made by the City on a timely basis to the appropriate Fiscal Agent.

Any amount owed by the City to a Bond Insurer for payment of Debt Service Requirements on Insured Bonds of a series of Parity Bonds pursuant to a Bond Insurance Policy shall be paid from Net Revenues with the same priority as other payments of Debt Service Requirements on that series of Parity Bonds.

(c) [Section 18.03]. Reserve Account. As provided in a Supplemental Ordinance, the City may establish a separate Reserve Account in the Reserve Fund for each series of Parity Bonds for which there is a Reserve Requirement. Each Reserve Account may be funded with the proceeds of the applicable series of Parity Bonds, a Reserve Account Insurance Policy, Net Revenues or any combination thereof. A Reserve Account Insurance Policy may be substituted for an equivalent amount of cash in a Reserve Account.

No payments need be made into a Reserve Account, if created, as long as the sum of the money in that Reserve Account and the insurance in effect under any Reserve Account Insurance Policy for the applicable series of Parity Bonds is equal to or greater than the Reserve Requirement for that series of System Bonds and all proceeds of the Reserve Account Insurance Policy used to pay Debt Service Requirement have been repaid. Money in each Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as provided in this Section 3(c) [18.03] and Section 3(d) [18.04], only to prevent deficiencies in the payment of the principal of, Accreted Value or interest on the series of Parity Bonds for which the Reserve Account was established and to reimburse the Insurer under any applicable Reserve Account Insurance Policy.

If the amount on deposit in the Debt Service Account for a series of Parity Bonds on a payment date for that series of System Bonds and available Net Revenues are not enough to pay the amount becoming due on that series on that date, an amount equal to the deficiency shall be transferred from the applicable Reserve Account to the Debt Service Account for that series of Parity Bonds. If the amount of money on deposit in the Reserve Account is not sufficient to make up the deficiency in the Debt Service Account for that series of Parity Bonds when due, a demand for payment shall be made on any applicable Reserve Account Insurance Policy.

A sum equal to the amount in such other Reserve Account and the proceeds of a Reserve Account Insurance Policy used to pay Debt Service Requirements on a series of Parity Bonds plus interest, if any, owed on amounts advanced pursuant to a Reserve Account Insurance Policy shall be deposited in that Reserve Account from the first Net Revenues received by the City which are not required by Section 3(a) [18.01] to be used for another purpose. The amount received shall first be used to reimburse the Reserve Account Insurer for amounts paid under the Reserve Account Insurance Policy used to pay Debt Service Requirements, second to pay interest or fees owed to a Reserve Account Insurer in connection with amounts advanced pursuant to a Reserve Account Insurance Policy, and third to replace amounts of money drawn from the Reserve Account. Any interest or fees due to a Reserve Account Insurer shall be subordinate to any amounts required to be paid for the benefit of the Owners of the series of Parity Bonds. The priority for the use of money deposited in a Reserve Account for a series of System Bonds may be changed by the Supplemental Ordinance for that Series.

If all proceeds drawn on a Reserve Account Insurance Policy and accrued interest thereon for a series of Parity Bonds have been reimbursed and paid, any amount on deposit in the Reserve Account relating to that series of System Bonds in excess of the Reserve Requirement for that series (taking into consideration the amount of insurance available under any applicable Reserve Account Insurance Policy) may be withdrawn at any time from the Reserve Account and deposited in the Replacement Fund. However, any excess which represents original proceeds of a series of Outstanding System Bonds or interest thereon shall first be used to pay Debt Service Requirements on that series of System Bonds or costs of the Project for which that series of System Bonds was issued.

If a Reserve Account Insurance Policy is used to satisfy the Reserve Requirement for a series of Parity Bonds, the City shall give notice thereof to each rating agency providing a rating for that series of System Bonds.

(d) [Section 18.04] Termination Upon Deposits to Maturity. No payments need be made into the Debt Service Account or Reserve Account for a series of Parity Bonds if the sum of the amounts in that Debt Service Account and Reserve Account (without regard for the coverage available under any Reserve Account Insurance Policy) is not less than the Debt Service Requirements due and to become due on and before the final maturity date of that series of Parity Bonds, both accrued and not accrued, and all proceeds paid under any Reserve Account Insurance Policy and Bond Insurance Policy for that series of Parity Bonds have been reimbursed and all amounts owed to the providers of such policies have been paid in full. Unless otherwise provided in the Supplemental Ordinance applicable to a series of Parity Bonds, the money retained in those two accounts shall be used only to pay the Debt Service Requirements on that series of System Bonds when due except that any money on deposit in any such Debt Service Account which is not necessary to pay such Debt Service Requirements shall be used as surplus Net Revenues and any money on deposit in any such Reserve Account which is not necessary to pay such Debt Service Requirements (other than proceeds of Outstanding Parity Bonds) shall be deposited in the Replacement Fund.

(e) [Section 18.05] Subordinated Bonds. Net Revenues shall be used as required in the 2025 NMED Loan and by the applicable ordinances of the Council authorizing the issuance of other Subordinated Bonds, the payment of Debt Service Requirements thereof and the funding of reserves for Subordinated Bonds. Subordinated Bonds shall have the order of priority

with respect to other Subordinated Bonds as set forth in the Supplemental Ordinances authorizing the issuance of Subordinated Bonds.

(f) [Section 18.06] Replacement Fund. In addition to Net Revenues, the City shall deposit in the Replacement Fund, all money released from a Reserve Account for a series of System Bonds in excess of the Reserve Requirement for that series pursuant to Section 18.03, except for any such excess which is designated for another System purpose by resolution or ordinance of the Council or which is proceeds of Outstanding System Bonds, together with such other moneys from other sources as may be designated by the Council.

While any System Bonds are outstanding, money on deposit in the Replacement Fund shall be used only (i) for replacement costs and capital improvements to the System, (ii) for extraordinary charges relating to the financing or refinancing of the System, and (iii) to purchase or otherwise defease, or provide for the defeasance of, Outstanding System Bonds.

(g) [Section 18.07] Rate Stabilization Fund. Money on deposit in the Rate Stabilization Fund may be withdrawn at any time and used for any purpose for which Gross Revenues may be used. If deposits to the Rate Stabilization Fund are made by the City from sources of legally available moneys other than Gross Revenues, then such deposits shall be excluded from computations required pursuant to Section 5 [Article XXIV] and Section 7(c) [Section 26.03].

(h) [Section 18.08] Pro Rata Deposits. If the amount of Net Revenues available for deposit in the Debt Service Fund is not sufficient to pay the entire amount required to be deposited in the Debt Service Accounts and/or Reserve Accounts, the Net Revenues available shall be deposited first in the Debt Service Accounts and then in the Reserve Accounts, in each case,

pro rata based upon the amount required to be deposited in each Account to the total Net Revenues available for deposit.

Reimbursements owed to a Bond Insurer, Reserve Account Insurer or provider of another Credit Facility for amounts used to pay Debt Service Requirements on a series of System Bonds shall be paid on the same pro rata basis and with the same priority as are amounts to be deposited in the Debt Service Account or Reserve Account, as applicable, with respect to the applicable series of Parity Bonds (or comparable accounts with respect to a series of Subordinated Bonds).

(i) [Section 18.09] Variable Rate Bonds. In making computations required by this Article, interest on Variable Rate Bonds which cannot be determined exactly for a future period shall be deemed to bear the interest rate required by the definition of Debt Service Requirements in the Master Ordinance or the applicable Supplemental Ordinance. To determine the amount required to be on deposit in any Debt Service Account for the payment of interest, computations of the interest rate on Variable Rate Bonds shall be made whenever there is a change in the interest rate on the applicable Variable Rate Bonds except that the computation need not be made more often than once in any month.

Section 4. [ARTICLE XIX] Transfers to Pay Principal of, Premium, if any, and Interest on System Bonds; Payment of Expenses.

(a) [Section 19.01] Transfer to Paying Agent. The City shall transfer legally available funds for the payment of Debt Service Requirements on each series of System Bonds to the applicable Paying Agent on or before the date on which each such payment is due.

(b) [Section 19.02] Expenses. The City or its designee shall pay all Expenses directly to the party entitled thereto from proceeds of a series of System Bonds, from amounts on deposit in the Acquisition Account for a series of System Bonds and from other Net Revenues, as applicable.

Section 5. [Article XXIV] Additional System Bonds.

(a) [Section 24.01] Limitations Upon Issuance of System Bonds. Subject to the limitations of this Section 5 and Section 6 [Article XXIV and Article XXV], nothing in Ordinance or the Ordinance authorizing execution and delivery of the 2025 NMED Loan Agreement shall be construed to prevent the issuance by the City of additional System Bonds.

(b) [Section 24.02] Parity Bonds. Parity Bonds may be issued for the System purposes including, but not limited to, (i) financing the Costs of a Project; or (ii) providing additional funds for deposit into a Reserve Account or the Replacement Fund and paying the costs incident to the issuance of such Parity Bonds or any combination of the foregoing.

The tests required in this Section 5 [Section 24.02] shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. For Parity Bonds with a funded Reserve Account (excluding any insurance coverage through a Reserve Fund Insurer), determination of average annual combined Debt Service Requirements or maximum combined annual Debt Service Requirements shall include application of the funds in the Reserve Account to the final debt service payment for the applicable Parity Bonds. Except as permitted herein and by Section 6 [Article XXV], prior to the issuance of additional Parity Bonds, the City shall be current in making all deposits required by Section 2 [Article XVIII] and the following test shall be satisfied:

(1) [24.02(a)] a certificate prepared by an Authorized Officer of the City showing that the Net Revenues for the Historic Test Period were at least equal to 130% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds after the issuance of the proposed Parity Bonds, or

(2) [24.02(b)] a certificate prepared by a Consulting Engineer showing that:

(aa) the Net Revenues for the Historic Test Period were at least equal to 130% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds immediately preceding the issuance of the proposed additional Parity Bonds;

(bb) for each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated Completion Date of the Project being financed, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant; and

(cc) the estimated Net Revenues for each of the three Fiscal Years immediately following the latest estimated Completion Date for the specified Project to be financed with proceeds of the proposed additional Parity Bonds, as certified to the Consulting Engineer by an Authorized Officer of the City, will be at least equal to 130% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds which will be outstanding immediately after the issuance of the proposed additional Parity Bonds.

For purposes of subsections (2)(aa) and (bb) [24.02(b)(i) and (ii)] above, in estimating Net Revenues, the Consulting Engineer may take into account (1) reasonable Gross Revenues from specified Projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Gross Revenues which have been approved by the City and

will be in effect during the period for which the estimates are provided, and (3) any other increases in Gross Revenues for such period which the Consulting Engineer certifies to be reasonable for purposes of such certificate. With respect to Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Operation and Maintenance Expenses, (ii) Operation and Maintenance Expenses associated with the specified Projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Net Revenues and shall also set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consulting Engineer or Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consulting Engineers may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

(c) [Section 24.03] Subordinate Obligations. Additional Subordinated Bonds in addition to the Outstanding Subordinate Obligations, including the 2025 NMED, Loan may be issued for the System purposes including, but not limited to, (i) financing the Costs of a Project; or (ii) providing additional funds for deposit into a Reserve Account or the Replacement Fund and

paying the costs incident to the issuance of such Subordinated Bonds or any combination of the foregoing.

The tests required in this Section 5(c) [Section 24.03] shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. For Subordinate Bonds with a funded Reserve Account (excluding any insurance coverage through a Reserve Fund Insurer), determination of average annual combined Debt Service Requirements or maximum combined annual Debt Service Requirements shall include application of the funds in the Reserve Account to the final debt service payment for the applicable Subordinate Bonds. Except as permitted herein and by Section 6 [Article XXV], prior to the issuance of additional Subordinated Bonds, the City shall be current in making all deposits required by Section 2 [Article XVIII] and the following test shall be satisfied:

(1) a certificate prepared by an Authorized Officer of the City showing that the Net Revenues for the Historic Test Period were at least equal to 120% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Outstanding Subordinated Bonds after the issuance of the proposed Subordinated Bonds, or

(2) a certificate prepared by a Consulting Engineer showing that:

(aa) the Net Revenues for the Historic Test Period were at least equal to 120% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Outstanding Subordinated Bonds immediately preceding the issuance of the proposed additional Subordinated Bonds;

(bb) for each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated Completion Date of the Project being financed, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant; and

(cc) the estimated Net Revenues for each of the three Fiscal Years immediately following the latest estimated Completion Date for the specified Project to be financed with proceeds of the proposed additional Subordinated Bonds, as certified to the Consulting Engineer by an Authorized Officer of the City, will be at least equal to 120% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Outstanding Subordinated Bonds which will be outstanding immediately after the issuance of the proposed additional Subordinated Bonds.

For purposes of subsections Section 5(c)(2)(aa) and (bb) [24.03(b)(i) and (ii)] above, in estimating Net Revenues, the Consulting Engineer may take into account (1) reasonable Gross Revenues from specified Projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Gross Revenues which have been approved by the City and will be in effect during the period for which the estimates are provided, and (3) any other increases in Gross Revenues for such period which the Consulting Engineer certifies to be reasonable for purposes of such certificate. With respect to Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Operation and Maintenance Expenses, (ii) Operation and Maintenance Expenses associated with the specified Projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made

in determining the estimated Net Revenues and shall also set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consulting Engineer or Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consulting Engineers may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

(d) [Section 24.04] Certificates. In determining whether additional Parity Bonds may be issued pursuant to Section 5(b) [Section 24.02] or additional Subordinated Bonds may be issued pursuant to Section 5(c) [Section 24.03], a written certificate or opinion of an Authorized Officer of the City or a Consulting Engineer shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the additional Parity Bonds or additional Subordinated Bonds, respectively.

(e) [Section 24.05] Superior Obligations Prohibited. As long as Parity Bonds are outstanding, the City shall not issue additional System Bonds having a lien on the Net Revenues prior and superior to the lien of Parity Bonds on Net Revenues.

(f) [Section 24.06] Variable Rate Bonds and Tender Indebtedness.

(1) [24.06(a)] In making the computations required by this Section 5 [Article XXIV], to determine if additional System Bonds may be issued, Variable Rate Bonds shall be deemed to bear a rate of interest at the 30-year Revenue Bond Index (published by The

Bond Buyer no more than two weeks prior to the date of sale) certified as described in the definition of Debt Service Requirements.

(2) [24.06(b)] No Variable Rate Bonds or Tender Indebtedness shall be issued unless such series of System Bonds is rated, based upon a Credit Facility or otherwise, at the time of issuance at the minimum level as required for investment by money market funds by at least one of the recognized major rating agencies.

(3) [24.06(c)] If the computations required by this Article are made assuming (i) interest at the maximum interest rate payable to the Bank providing a Credit Facility for the Variable Rate Bonds or Tender Indebtedness and (ii) the accelerated principal repayment schedule due to such Bank, then the acceleration of principal payments and excess interest due to such Bank may be on a parity with the payment of Debt Service Requirements on Parity Bonds; provided, however, if such assumptions are not made in making the computations required by this Article, then any accelerated principal payments due to such Bank or any interest due in excess of the rate on the Variable Rate Bonds or Tender Indebtedness must be subordinated to the payment of Debt Service Requirements on Parity Bonds.

(4) [24.06(d)] Any Bank providing a Credit Facility for liquidity support of Variable Rate Bonds or Tender Indebtedness must be rated at the minimum level as required for investment by money market funds by at least one of the recognized major rating agencies.

(5) [24.06(e)] Any trustee, tender agent or paying agent employed with respect to Variable Rate Bonds or Tender Indebtedness must be a commercial bank with trust powers and any remarketing agent employed with respect to Variable Rate Bonds or Tender Indebtedness must have trust powers if it is responsible for holding monies or receiving bonds.

(6) [24.06(f)] The provisions of this Section 24.06 and the other provisions of the Master Ordinance stating terms and conditions relating to the issuance of Variable Rate Bonds and Tender Indebtedness may be modified at the time of issuance of Variable Rate Bonds or Tender Indebtedness in accordance with the Supplemental Ordinance authorizing issuance thereof.

Section 6. [ARTICLE XXV] Refunding Bonds.

The provisions of Section 6 [Article XXIV of Ordinance] are subject to the following exceptions:

(a) Privilege of Issuing Refunding Obligations. If at any time while System Bonds remain Outstanding, the City desires to refund any Outstanding System Bonds or other obligations payable from Net Revenues, those System Bonds or other obligations, or any part thereof, may be refunded regardless of whether the priority of the lien for the payment of the refunding System Bonds on the Net Revenues is changed (except as provided in Sections 24.04 and in subsections (b), (c), and (d) of this Section 6 [Article XXV].

(b) Limitations Upon Issuance of Refunding Parity Bonds. No refunding bonds or other refunding obligations shall be issued as Parity Bonds unless:

(i) there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Parity Bonds for any Fiscal Year after the issuance of refunding Parity Bonds will not exceed the combined Debt Service Requirements for such Fiscal Year on all Outstanding Parity Bonds authorized prior to the issuance of such refunding Parity Bonds by more than ten percent (10%) in any such Fiscal Year, and the City is in current compliance with the Rate Covenant, or

(ii) The refunding Parity Bonds are issued in compliance with Section 5(b) [Section 24.02].

(c) Limitations Upon Issuance of Refunding Subordinated Bonds. No refunding bonds or other refunding obligations shall be issued as Subordinated Bonds unless:

(i) there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Subordinated Bonds for any Fiscal Year after the issuance of refunding Subordinated Bonds will not exceed the combined Debt Service Requirements for such Fiscal Year on all Outstanding Subordinated Bonds authorized prior to the issuance of such refunding Subordinated Bonds by more than ten percent (10%) in any such Fiscal Year, and the City is in current compliance with the Rate Covenant, or

(ii) The refunding Subordinated Bonds are issued in compliance with Section 5(c) [Section 24.03].

(d) Limitations Upon Issuance of Any Refunding System Bonds. Any refunding System Bonds shall be issued with such details as the Council may provide by appropriate proceedings but without impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of the series of System Bonds or other obligations payable from Net Revenues to which the refunding was applicable.

Section 7. Protective Covenants. The City hereby covenants and agrees with each and every registered owner of Obligations that:

(a) [Section 26.01] Use of System Bond Proceeds. The City covenants and agrees that it will promptly apply the proceeds of each series of System Bonds to the Project for which they were issued or for the refunding of Outstanding System Bonds, as applicable, and for the other purposes permitted by the Master Ordinance or applicable Supplemental Ordinance.

(b) [Section 26.02]. Payment of System Bonds. The City covenants and agrees that it will promptly pay the Debt Service Requirements on System Bonds at the place, on the dates and in the manner specified in the Master Ordinance, the applicable Supplemental Ordinance, Related Documents and the System Bonds.

(c) [Section 26.03] Rate Covenant.

(1) The City covenants that it will at all times fix rates and collect charges for each class of service rendered by the System, and to, from time to time, amend or adjust such rates so that Gross Revenues of the System shall always be sufficient to provide for the payment of expenses of administration, Operation and Maintenance Expenses, other expenses which may be necessary to preserve the System in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time; and

(2) The City further covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Net Revenues shall at least equal (i) 130% of the Debt Service Requirements on the Series 2016 Bonds and any additional Parity Bonds Outstanding in such Fiscal Year and (ii) 120% of the Debt Service Requirements on Outstanding Parity Bonds and Subordinated Bonds, including the 2025 NMED Loan, Outstanding in such Fiscal Year.

(3) Failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under the Master Ordinance so long as the City, within 180 days after the end of any such Fiscal Year, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer which would bring the City into compliance

with the Rate Covenant. The City is also required under the Master Ordinance in each Fiscal Year to complete a review of its financial condition for the purpose of estimating whether the Net Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth above. If the City determines that the Net Revenues may not be so sufficient, it shall forthwith cause the Consulting Engineer to make a study for the purpose of recommending a schedule of fees, rates and charges for the System which, in the opinion of the Consulting Engineer, will cause sufficient Gross Revenues to be collected in such Fiscal Year to comply with the Rate Covenant set forth above and will cause additional Gross Revenues to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City shall as promptly as practicable adopt and place in effect the schedule of fees, rates and charges recommended or approved by the Consulting Engineer pursuant to the Master Ordinance. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may implement reductions in Operation and Maintenance Expenses for the System in an amount sufficient to meet the Rate Covenant.

(d) [Section 26.04] Lien on Lands Serviced by System. State law grants the City a lien upon each lot or parcel of land for the charges imposed for water and sanitary sewer services supplied by the System to the owner of such lot or parcel (except as otherwise provided in Section 3-23-6 NMSA). The City will cause each lien to be perfected in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-5 NMSA. The City will take all necessary steps to enforce the lien against any parcel of property the owner of which is delinquent for more than six months in the payment of charges imposed for the use of the System.

(e) [Section 26.05] Levy of Charges. The City will promptly fix, establish and levy the rates and charges which are required by Section 7(c) [Section 26.03]. Unless contrary to any provision of applicable law, any resolution or ordinance adopted by the Council to fix, establish and levy such rates and charges shall be deemed an administrative or executive matter not subject to the referendum provisions of the Charter or State law. No reduction in any initial or existing rate schedule for the System may be made unless:

(1) the City has fully complied with the requirements of the Rate Covenant contained in Section 7(c) [Section 26.03] for any 12 consecutive months out of the 16 calendar months immediately preceding the reduction of the rate schedule, and

(2) the audit required by Section 7(i) [Section 26.09] or a separate certificate by an Independent Accountant for or relating to any 12 consecutive months out of the 16 calendar months immediately preceding any reduction discloses that the Net Revenues resulting from the proposed reduced rate schedule would have been sufficient to meet the Rate Covenant contained in Section 26.03 during the applicable 12-month period.

(f) [Section 26.06] Efficient Operation. The City will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the Service Area.

(g) [Section 26.07] Records. So long as System Bonds remain Outstanding, proper books of record and account will be kept by the City, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System.

However, pursuant to Section 6-14-10(E) NMSA, records with regard to the ownership or pledge of System Bonds are not subject to inspection or copying.

(h) [Section 26.08] Right to Inspect. Owners, or their duly authorized agents, shall have the right to inspect at all reasonable times all records, accounts and data relating to the System.

(i) [Section 26.09] Audits. Within 180 days following the close of each Fiscal Year, the City will cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant.

(j) [Section 26.10] Billing Procedure. Bills for water or water facilities furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the City. If permitted by law, if a bill is not paid within the period of time required by such ordinance, water service shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

(k) [Section 26.11] Charges and Liens Upon System. The City will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The City will not create or permit any lien or charge upon the System or the Net Revenues except as permitted by the Master Ordinance, or it will make adequate provisions to satisfy and discharge within 60 days after the same accrue, all lawful claims and demands for labor, materials,

supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Net Revenues. However, the City shall not be required to pay or cause to be discharged, or make provision for any tax, assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse effect on Owners.

(l) [Section 26.12] Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the City will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Council, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by municipalities which operate water systems. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the City may have a material interest and of which the City may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the City determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged

and thereafter, any remainder may be used to redeem System Bonds or be treated as Gross Revenues and used in the manner provided in Article XVIII.

(m) [Section 26.13] Competing System. Unless contrary to any provision of, or required by, applicable law, as long as System Bonds are outstanding, the City will not grant any franchise or license to a competing water utility system, or permit any person, association, firm or corporation to sell water utility services or facilities to any consumer, public or private, within the Service Area of the System; provided, however, that nothing shall prevent the City from annexing land into its boundaries solely due to the fact that there is a competing utility system or person, association, firm or corporation providing such utility services or facilities within or for the land to be annexed.

(n) [Section 26.14] Alienating System. While the System Bonds are Outstanding, the City shall not, except as permitted below, transfer, sell or otherwise dispose of the System. For purposes of this Section, any transfer of an asset over which the City retains or regains substantial control shall not, for so long as the City has such control, be deemed a disposition of the System.

The City may transfer, sell or otherwise dispose of the System only if such transfer, sale or disposition complies with one or more of the following provisions:

(1) The property being disposed of is inadequate, obsolete or worn out; or

(2) The property proposed to be disposed of and all other property of the System disposed of during the 12-month period ending on the day of such transfer (but excluding property disposed of under (a) above), will not, in the aggregate, constitute a Significant

Portion of the System determined as described below and the proceeds are deposited into the Income Fund to be used as described below; or

(3) The City receives fair market value for the property, the proceeds are deposited into the Income Fund to be used as described below and, prior to the disposition of such property, there is delivered to the Fiscal Agent a certificate of a Consultant to the effect that notwithstanding such disposition, but taking into account the use of such proceeds in accordance with the expectations of the City as evidenced by a certificate of an Authorized Officer, the Consultant estimates that the City will be in compliance with the Rate Covenant during each of the five Fiscal Years immediately following such disposition.

For purposes of this Section, the term "Significant Portion" of the System means property of the System which, if such property had been disposed of by the City at the beginning of the Fiscal Year which includes the month of commencement of the 12-month period referred to in (b) above would have resulted in a reduction in Net Revenues for such Fiscal Year of more than 4% when the actual Net Revenues for such Fiscal Year are decreased by the revenues directly attributable to such property of the System and increased by the expenses of the City directly attributable to such property of the System.

Proceeds of the disposition of assets under (b) or (c) above shall be deposited into the Income Fund and used, within a reasonable period of time, not to exceed three years, to (i) provide additional revenue-producing properties to the System, (ii) redeem System Bonds or (iii) create an escrow fund pledged to pay specified System Bonds and thereby cause such System Bonds to be deemed to be paid as provided in Article XXXI of Ordinance.

Properties of the System which were financed with the proceeds of obligations the interest on which is then excluded from gross income for federal income tax purposes shall not be

disposed of, except under the terms of provision (a) above, unless the City has first received a written opinion of Bond Counsel to the effect that such disposition will not cause the interest on such obligations to become includable in gross income for federal income tax purposes.

No such disposition shall be permitted which would cause the City to be in default of any other covenant contained in Ordinance.

(o) [Section 26.15] Extending Interest Payments. To prevent any accumulation of claims for interest after maturity, except as permitted by the Master Ordinance, Supplemental Ordinance or Related Documents, the City will not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on System Bonds. If the time for payment of interest is extended contrary to the provisions of this Section, the installments of interest extended shall not be entitled, in case of an event of default under the Master Ordinance, Supplemental Ordinance or Related Documents, to the benefit or security of the Master Ordinance, Supplemental Ordinance or Related Documents until the prior payment in full of the principal of, Accreted Value and interest on all other System Bonds then outstanding.

(p) [Section 26.16] Competent Management. The City shall employ experienced and competent personnel to manage the System.

(q) [Section 26.17] Performing Duties. The City will faithfully and punctually perform all duties with respect to the System required by State and City laws, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Section and the proper segregation and application of the Gross Revenues.

(r) [Section 26.18] Other Liens. Other than as stated in or provided by the Master Ordinance or applicable disclosure document for a series of System Bonds, there are no liens or encumbrances of any nature whatsoever, on or against the System, the Gross Revenues or the Net Revenues.

(s) [Section 26.19] City's Existence. The City will maintain its corporate identity and existence as long as System Bonds remain outstanding unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any Owner. However, the City may, annex or de-annex land if the City complies with other applicable covenants contained in the Master Ordinance.

(t) [Section 26.20] Tax Compliance.

(1) With respect to System Bonds to be issued as tax-exempt bonds under Sections 103 and 141 of the Code, the City will restrict the use and investment of the proceeds of the System Bonds and any funds reasonably expected to be used to pay the System Bonds to the extent necessary so that the System Bonds will not constitute arbitrage bonds under Section 148 of the Code. Authorized Officers having responsibility for issuing System Bonds will give appropriate certificates of the City for inclusion in transcripts of proceedings for System Bonds setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the System Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on System Bonds.

(2) With respect to System Bonds to be issued as tax-exempt bonds under Sections 103 and 141 of the Code, the City (i) will take or cause to be taken such actions that may be required of it for the interest on the System Bonds to be and remain excluded from

gross income for federal income tax purposes, and (ii) will not take or permit to be taken any action that would adversely affect such exclusion, and the City will, among other acts of compliance to the extent necessary to assure the exclusion of interest on System Bonds under the Code, (A) apply, or cause to be applied, the proceeds of the System Bonds to the governmental purpose of the borrowing, (B) restrict the yield as necessary on investment property defined in Section 148(b)(2) of the Code acquired with gross proceeds of the System Bonds, (C) make timely rebate payments to the federal government in accordance with Section 148(f) of the Code, the Rebate Regulations (as defined in Article XXVII of Ordinance) and Ordinance, (D) maintain proper books and records and make, or have made, calculations and reports, and (E) refrain from certain uses of System Bond proceeds. Authorized officers are authorized and directed to take action, make or have made calculations and rebate payments, and make or give covenants, representations, reports and certifications as may be required or appropriate to assure the exclusion of interest on the System Bonds from gross income for federal income tax purposes.

(3) The City covenants that it will not make or cause to be made any investment or deposit described or permitted in the Master Ordinance at other than the value permitted for any such investment or deposit under Sections 1.148-0 through 1.148-11 and 1.150-1 and 1.150-2 of the Regulations or any successor provision applicable to the System Bonds.

(4) The provisions of this Section 7(t) [Section 26.20] shall not apply to the System Bonds, or any series of System Bonds, if at any time and to the extent that the City receives an opinion of Bond Counsel that the failure to comply will not adversely affect the exclusion from gross income of interest on the System Bonds for federal income tax purposes under Section 103(a) of the Code.

(5) The City may issue System Bonds that are not tax-exempt bonds under the Code.

(u) [Section 26.21] Free Services Prohibited. No free service, facilities nor commodities shall be furnished by the System. Should the City use water services or facilities supplied by the System for municipal purposes, or any combination thereof, or in any other manner use the System, or any part thereof, any use of the System by or of the services rendered thereby to the City, or any department, board or agency thereof, will be paid for from the City's general fund or other available revenues at the reasonable value of the use so made, or service so rendered, which shall in no event be less than the rates charged to a System customer with similar consumption; and all the revenue so derived from the City shall be deemed to be income derived from the operation of the System, to be used and accounted for in the same manner as any other income derived from the operation of the System.

INTERIM PROMISSORY NOTE
($17,000,000 Water Utility System Loan)

To the New Mexico Environment Department (NMED)
Clean Water State Revolving Loan Fund (CWSRF)
-also known as-
Wastewater Facility Construction Loan Program

FOR VALUE RECEIVED, the **City of Santa Fe** (Borrower) promises to pay the NMED at:

New Mexico Environment Department
Construction Programs Bureau
1190 S. St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87505

or by electronic funds transfer (EFT)

or at such other place as NMED may hereafter designate in writing, the principal amount of

Seventeen Million Dollars ($17,000,000)

or so much of that amount as has been paid by NMED to the Borrower pursuant to the terms of the Interim Loan Agreement (Agreement) or any amendment to the Agreement for CWSRF 140 A-F between NMED and the Borrower plus **0.01% project interest annually** from the date of each respective disbursement annually until paid in full. Effective on the execution of the Agreement.

The principal plus interest due, if applicable, and payable on this Note shall be payable as follows: Principal loaned, and the subsequent interest shall be due and paid according to the Final Promissory Note as described.

Repayment Rate and Schedule

Annual principal and interest payments will commence not later than one year after completion of the project and shall be paid in annual installments due on the anniversary of the first annual installment. A Final Promissory Note will be processed and executed, and the Agreement will be amended and executed as a Final Loan Agreement to reflect the final amount loaned by NMED to Borrower. The principal amount of the Final Promissory Note and Agreement, as amended, will be an amount equal to that loaned and paid to Borrower under this Note.

Source of Repayment

The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as **Net Water Utility System Revenue**. Except as stated in the Ordinance, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

Assignment

No assignment by NMED of the right to receive payments under this Note shall affect the Borrower's obligations or rights other than to make payments either by EFT or at the address designated by NMED to the Borrower in writing.

Collection and Default

At the option of NMED, any amount paid by NMED to collect amounts due under this Note or to preserve or protect NMED's rights under the Agreement shall become a part of, and bear interest at the interest rate as set forth in the previous REPAYMENT RATE AND SCHEDULE section above and shall become immediately due and payable by the Borrower to NMED upon demand by NMED. Events of default and remedies upon an event of default as described in the Agreement in COVENANTS are incorporated herein by reference.

Prepayment

The Borrower may prepay all or any part of the principal of this Note without penalty. Extra payments, shall, after payment of interest due, be applied to the reduction of principal. After any prepayment of principal, the Borrower shall continue to pay the amounts listed in the Agreement and Final Promissory Note until the entire principal and interest are paid in full.

Authority

This Note is authorized by the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC, and the Borrower's Ordinance No. 2024-6.

This Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall this Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment of the principal or interest on the Agreement or Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and effective as of the date listed below by the Borrower.

_____
Borrower's Authorized Signature

_____
Borrower's Printed Name

_____
Title

_____
Date

State of _

County of

Signed or attested before me on _____ by _____ ,
Date Witness for City of Sant Fe

_____
Notarial Officer Signature

[Official Stamp] Title of Office:

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2025-04

INTRODUCED BY:

Councilor Carol Romero-Wirth

Councilor Michael Garicia

Councilor Amanda Chavez

A BILL

AMENDING ORDINANCE NO. 2024-6 TO APPROVE THREE INDIVIDUAL LOAN AGREEMENTS WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT TO BE PAID WITH REVENUES FROM EACH SYSTEM, RESPECTIVELY: (1) A WASTEWATER PROJECT LOAN AGREEMENT; (2) A WATER PROJECT LOAN AGREEMENT; AND (3) A SOLID WASTE COLLECTION PROJECT LOAN AGREEMENT; INCORPORATING DEFINITIONS AND COVENANTS RELATING TO WASTEWATER, WATER, AND SOLID WASTE SYSTEM DEBT OBLIGATIONS IN EACH LOAN AGREEMENT, RESPECTIVELY, BY REFERENCE HEREIN; RATIFYING PRIOR ACTION CONSISTENT WITH THE PROVISIONS HEREOF; AND REPEALING PRIOR ACTION INCONSISTENT WITH THE PROVISIONS HEREOF, BUT ONLY TO THE EXTENT OF SUCH INCONSISTENCY.

Capitalized terms used in the following preambles [~~are defined in Section 1 of this Ordinance~~] have the same meaning as set forth in Section 1 of this Amendatory Ordinance, unless the context requires otherwise.

underscored material = new [~~bracketed material~~] = delete

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

WHEREAS, the Borrower now owns, operates, and maintains public utilities including Water, Wastewater, and Environmental Services systems ("System"); and

WHEREAS, the present Systems are insufficient and inadequate to meet the needs of the Borrower; and

WHEREAS, the New Mexico Environment Department ("NMED") is offering the Borrower [~~a~~] three loans to assist in financing improvements to the Systems (the "Projects"), pursuant to [~~an~~] three agreements ("Loan Agreements") and respective promissory notes ("Notes"), payable solely from certain revenues described herein ("the Pledged Revenues"); and

WHEREAS, NMED intends to fund the Loan Agreements with funds that include a one-time federal grant to the NMED from the Environmental Protection Agency (EPA); and

WHEREAS, under the terms of the Loan Agreements, the Projects are [~~is~~] subject to specific requirements of the federal grants;[~~and~~]

WHEREAS, the Borrower has the following obligations outstanding to which the Pledged Revenues have already been pledged:

Funding Source (e.g., Revenue Bond, NMED, NMFA, etc.) and Series# or Loan/Project #	Principal Amount Outstanding at 06/30/2023
Water Utility System Refunding, Series 2016	$30,145,000
Public Project Revolving Fund ("PPRF")-Buckman Diversion Project, Series 2008	$5,191,493
Drinking Water Revolving Fund ("DWRLF") No. 2696, Series 2013	$1,499,281

WHEREAS, the Governing Body of the Borrower has determined that it is in the best

interest of the Borrower to accept and enter into the Loan Agreements and to execute and to deliver the Notes, for each of the three agreements respectively, to the NMED[,]; and

WHEREAS, the Governing Body adopted Ordinance No. 2024-6 on August 14, 2024, pursuant to which it approved a form of loan agreement with the New Mexico Environment Department ("NMED") in the principal amount of $151,000,000 (the "Proposed Combined NMED Loan Agreement"), for the purpose of financing (1) improvements to the City's Water Utility System, consisting of the Nichols Dam Outlet Works Rehabilitation Project (the "Water System Improvement Project"); (2) improvements to the City's Wastewater Utility System, consisting of (a) UV Disinfection Replacement project; (b) Sanitary Sewer Line Repair project, (c) Collections Division Equipment and Administration Building project, and (d) Wastewater Treatment Plant Repair and Rehabilitation Project (collectively, the "Wastewater System Improvement Projects"); and (3) improvements to the City's Solid Waste Collection System, consisting of Environmental Services Division Maintenance and Administrative Building Project (the "Solid Waste System Project"); and

WHEREAS, the portion of the Proposed Combined NMED Loan Agreement to be applied to the Water System Improvement Project would be repayable from Net Water System Revenues; and

WHEREAS, the portion of the Proposed Combined NMED Loan Agreement to be applied to the Wastewater System Improvement Project would be repayable from Net Wastewater System Revenues; and

WHEREAS, the portion of the Proposed Combined NMED Loan Agreement to be applied to the Solid Waste System Improvement Project would be repayable from Net Solid Waste System Revenues; and

WHEREAS, each of the Net Water System Revenues, Net Wastewater System Revenues, and Net Solid Waste System Revenues has been pledged as security for repayment of, respectively,

outstanding Net Water System Revenue obligations, outstanding Net Wastewater System Revenue obligations, and Net Solid Waste System Revenue obligations; and

WHEREAS, the ordinances authorizing the issuance of outstanding Net Water System Revenue obligations include definitions and covenants which are specific to the operation of the Water Utility System, and govern the issuance of additional debt obligations secured by Net Water System Revenue; and

WHEREAS, the ordinances authorizing the issuance of outstanding Net Wastewater System Revenue obligations include definitions and covenants which are specific to the operation of the Wastewater Utility System, and govern the issuance of additional debt obligations secured by Net Wastewater System Revenue; and

WHEREAS, the ordinances authorizing the issuance of outstanding Net Solid Waste System Revenue obligations include definitions and covenants which are specific to the operation of the Solid Waste Collection System, and govern the issuance of additional debt obligations secured by Net Solid Waste System Revenue; and

WHEREAS, for the purpose of delineating the separate net system revenues being pledged as security for repayment of the loan funds to be provided by NMED for the Water System Improvement Project, the Wastewater System Improvement Projects and the Solid Waste System Improvement Project, and the separate definitions and covenants applicable to each category of pledged revenues, the Governing Body deems it advisable and in the interest of the City to approve a separate loan agreement for each of the Water System Improvement Project, the Wastewater System Improvement Projects, and the Solid Waste System Improvement Project (collectively, the "Improvement Projects"); and

WHEREAS, the following forms of NMED loan documents have been presented to the Governing Body in connection with its consideration of this Ordinance:

(1) $17,000,000 Water Utility System Interim Loan Agreement and

Supplement with Covenants and Provisions Applicable to Net Water Utility System Obligations, and Interim Promissory Note;

(2) $114,000,000 Wastewater Utility System Interim Loan Agreement and Supplement with Covenants and Provisions Applicable to Net Wastewater Utility System Obligations, and Interim Promissory Note; and

(3) $20,000,000 Solid Waste Collection System Interim Loan Agreement and Supplement with Covenants and Provisions Applicable to Net Solid Waste Collection System Obligations, and Interim Promissory Note;

and

WHEREAS, the City intends to finance the costs of the Water System Improvement Project with the proceeds of the Water Utility System Interim Loan Agreement, the costs of the Wastewater Utility System Improvement Projects with the proceeds of the Wastewater Utility System Interim Loan Agreement, and the costs of the Solid Waste Collection System Improvement Project with the proceeds of the Solid Waste Collection System Interim Loan Agreement (together with the Water Utility System Interim Loan Agreement and the Wastewater Utility System Interim Loan Agreement, as each is supplemented by its respective Supplement, the "Loan Agreements"), and to authorize the execution and delivery of the Loan Agreements and corresponding Promissory Notes, subject to the terms and provisions of this Amendatory Ordinance.

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

Section 1. Definitions. As used in the Ordinance, the following terms shall have the meanings specified below, unless the context clearly requires otherwise and to the extent that the terms do not conflict with the three Loan Agreement Supplements *(such meaning to be equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined)*: In addition to the terms defined in the recitals hereof and below in this section,

the defined terms appearing in the Supplement with Covenants and Provisions Applicable to Net Water Utility System Obligations, the Supplement with Covenants and Provisions Applicable to Net Wastewater Utility System Obligations, and the Supplement with Covenants and Provisions Applicable to Net Environmental Services Division Collection System Obligations, are incorporated herein by reference.

ACT. The general laws of the State, including the Wastewater Facility Construction Loan Act at NMSA 1978, Sections 74-6A-1 to -15 , as amended; enactments of the Governing Body of the Borrower relating to the Notes and the Loan Agreements made by resolution or ordinance, including this ordinance; and the powers of the Borrower as a public body under authority given by the Constitution and Statues of the State.

ANNUAL AUDIT or SINGLE AUDIT. Financial statements of the Borrower as of the end of each Fiscal Year, audited by an Auditor, consistent with the federal Single Audit Act and the State Auditor's rules.

AUTHORIZED OFFICER. City of Santa Fe Mayor Alan Webber or other officer or agent of the Borrower is designated by the Borrower's Signature Resolution Number 2024-30 adopted by the Governing Body of the Borrower, as amended.

BORROWER. The entity requesting funds pursuant to the Act.

FISCAL YEAR. The twelve-month period commencing on the first day of July of each year and ending on the last day of June of the succeeding year, or any other twelve-month period which the Borrower hereafter may establish as the fiscal year of the System.

GOVERNING BODY OF THE BORROWER. City of Santa Fe governing body.

LOAN. A loan of funds from NMED made pursuant to the Loan Agreement.

LOAN AGREEMENT. The interim loan agreement between the Borrower and the NMED, pursuant to which funds will be loaned to the Borrower to construct the Project and pay eligible costs relating thereto; and the final (repayment) loan agreements which shall state the

amounts put into repayment the NMED loaned to the Borrower, which shall be executed annually or biannually per an agreed upon disbursement amount or upon completion of the Projects.

NMSA. New Mexico Statues Annotated, 1987 Compilation, as amended and supplemented.

NOTE. The interim and final promissory notes issued by the Borrower to the NMED evidencing the obligation of the Borrower to the NMED incurred pursuant to the Ordinance and Loan Agreements.

OPERATION AND MAINTENANCE. All reasonable and necessary expenses of the Systems, paid or accrued, relating to operating, maintaining, and repairing the System.

ORDINANCE. This Ordinance includes amendments.

PARITY BONDS or PARITY OBLIGATIONS. Revenue Bonds and other bonds or other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues on parity with the bonds or obligations as listed in this Ordinance.

PLEDGED REVENUES.

- Water System Revenue for Nichols Dam Project
- Wastewater System Revenue for
    - The Ultraviolet (UV) Disinfection Replacement Project,
    - The Collections Equipment and Administrative Building, and
    - The Sanitary Sewer Line Repair and Rehabilitation
    - The Wastewater Treatment Plant (WWTP) Rehabilitation.
- Environmental Services Division Net Revenue for the Environmental Services Division Administrative Building, Maintenance Space, and Storage Area.

PROJECT. The most current NMED approved Project Description described on the Project Description Form on file with NMED, including but not limited to:

- Nichols Dam Outlet Works Rehabilitation.

- UV Disinfection Replacement Project.
- Collections Equipment and Administrative Building.
- Sanitary Sewer Line Repair/Rehabilitation.
- Wastewater Treatment Plant Repair and Rehabilitation
- Environmental Services Division Administrative Building, Maintenance Space, and Storage Area

PROJECT COMPLETION DATE. The date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

REGULATIONS. Regulations promulgated by the Water Quality Control Commission at 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 - 20.7.7 NMAC.

SUBORDINATE OBLIGATIONS. Other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues subordinate to the lien of [~~the~~] each Loan Agreement and Note as may be listed in this Ordinance.

Section 2. RATIFICATION. All action before now (not inconsistent with the provisions of the Ordinance) by the Governing Body, the officers and employees of the Borrower, directed toward the Loan Agreements and the Notes, is ratified, approved and confirmed as a result of this document

Section 3. Approval of Loan Agreements. The Loan Agreements, as supplemented with the Supplement corresponding to each, and the Interim Promissory Note corresponding to each Loan Agreement, are hereby approved for execution and delivery to NMED, with such modifications as may be required by NMED or otherwise deemed advisable and consistent with the purposes of this Amendatory Ordinance. Prior approval of the Proposed Combined NMED Loan Agreement pursuant to Ordinance No. 2024-6 is hereby repealed.

Section [~~3~~] 4. FINDINGS. The Governing Body of the Borrower declares that it has

considered all relevant information and data and makes the following findings:

(A) The execution and delivery of the Loan Agreements and the Notes pursuant to the Act to provide funds to finance the Projects, is necessary and in the interest of the public health, safety, and welfare of the residents of the Borrower.

(B) The money available for the Projects from all sources other than the Loan Agreements is not sufficient to pay when due to cost of the Project.

(C) The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreements and Notes.

Section [4]5. [~~**SYSTEM.** The Systems shall continue to constitute Water, Wastewater, and Environmental Services systems and shall be operated and maintained as such~~] **Repeal of Prior Inconsistent Action.** All ordinances or parts of ordinances, including Ordinance No. 2024-6, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repeal shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section [~~5~~]6. Authorization [~~OF PROJECT~~] to Execute Related Documents and Delegated Authority. The acquisition and construction of the Projects and payment of eligible items are set forth in the regulations from proceeds of the Loan Agreements and Notes are [~~is~~] hereby authorized as a cost not to exceed the principal Loan amounts, respectively [~~of $ 151 million~~], excluding any cost of the Project to be paid from any source other than the proceeds of the Loan Agreements and respective Notes

Section [~~6~~]7. AUTHORIZATION OF LOAN AGREEMENTS.

(A) For the purpose of protecting the public health, conserving the property, and protecting the general welfare of the borrowing community it is hereby declared necessary that the Borrower execute and deliver the Loan Agreements and Notes to be payable and collectible solely from the Pledged Revenues. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreements to the Borrower over the construction period of the Project. The principal

Loan amounts of the Notes shall not exceed the loan amounts specified in each of the three agreements [~~$151 million~~] without the adoption of another Ordinance amending the Ordinance by the Governing Body of the Borrower, *and the annual interest rate on that principal amounts shall not exceed 0.01% percent per annum. Interest shall be computed as a percentage per year on the outstanding principal amounts on the Loans on the basis of a 365-day year, actual number of days lapsed.* The final maturity date on the Notes shall not extend beyond the agreed upon useful life of the project. The Loans shall be repaid in substantially equal annual installments in the amount and on the dates provided in the Loan Agreements with the first annual installment in the amount and on the dates provided in the Loan Agreements with the first annual installment due no later than one year after the completion of the project. The Borrower must maintain a debt service coverage ratio of no less than 1.2 and must obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues.

(B) If the Borrower fails to satisfy any federal grant requirements or conditions, the Borrower may be required to refund any federal grant funds disbursed to the Borrower from NMED.

(C) The NMED has approved the form of the Loan Agreements and the Notes. The Authorized Officer is hereby directed to execute and deliver the Loan Agreements and the Notes and any amendments to the [~~I~~]Loan Agreements or Notes to be executed after completion of the Project with such changes consistent with the Ordinance. The approval by an Authorized Officer of these documents in their final forms shall constitute conclusive evidence of their approval and compliance with this section.

(D) From the date of the initial execution and delivery of the Loan Agreements and the Notes, Authorized Officers, agents and employees of the Borrower are authorized, empowered, and directed to carry out such acts and to execute all such documents as may be necessary to comply with the provisions of this Ordinance, the Loan Agreements, and the Notes.

Section [~~7~~]8. SPECTIAL LIMITED OBLIGATIONS. All Funds disbursed pursuant to the Loan Agreements and the Notes shall be special limited obligations of the Borrower and shall be payable and collectible solely from the Pledged Revenues which are irrevocably pledged as set forth in this Ordinance. The NMED may not look to any general or other fund for the payment on the Loan Agreements and the Notes except the designated special funds pledged. The Loan Agreements and the Notes shall not constitute indebtedness or debts within the meaning of any constitutional, charter, or statutory provision or limitation, nor shall they be considered or be held to be general obligations of the Borrower and shall recite that they are payable and collectible solely from the Pledged Revenues.

Section 9. Effective Date, General Summary for Publication. Upon due adoption of this Ordinance, the City shall record and preserve it as is consistent with 2-2.4, "Ordinances; effective date; proof of publication", SFCC 1987, and this Ordinance shall be in full force and effect after its publication in accordance with law.

[~~**Section 8. OPERATION OF PROJECT.** The Borrower shall operate and maintain the Project so that it will function properly over its structural and material design life.~~

~~**Section 9. USE OF PROCEEDS.** The NMED shall disburse Funds pursuant to the Loan Agreement for NMED approved costs incurred by the Borrower for the Project or to pay contractors or suppliers of materials for work performed on the Project as set forth in the Loan Agreement.~~

~~**Section 10. APPLICATION OF REVENUES.**~~

~~**(A) OPERATION AND MAINTENANCE.** So long as the Loan Agreement and the Note are outstanding, either as to principal or interest, or both, the Borrower shall pay for the operation and maintenance expenses of the System, approved indirect charges and any amounts for capital replacement and repair of the System as incurred.~~

~~**(B) PARITY OBLIGATIONS AND OTHER APPROVED DEBT(S)**. The Borrower shall pay the principal, interest and administrative fees (if applicable) of parity obligations and other approved debts which are secured from the Pledged Revenues as scheduled.~~

~~**(C) EQUITABLE AND RATABLE DISTRIBUTION.** Obligations of the Borrower secured by the Pledged Revenues on parity with the Loan Agreement and the Note, from time to time outstanding, shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or creation.~~

~~**(D) SUBORDINATE OBLIGATIONS.** The Pledged Revenues used for the payment of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan Agreement and the Note, including payments to be made to other obligations payable from the Pledged Revenues which have a lien on the Pledged Revenues on parity with the Loan Agreement and the Note.~~]

Section [~~11~~] 10. LIEN OF LOAN AGREEMENTS AND NOTES. The Loan Agreements and the Notes shall constitute irrevocable liens upon the Pledged Revenues with priorities on the Pledged Revenues as set forth in the Loan Agreements [~~in this Ordinance~~]. The Borrower hereby pledges and grants a security interest in the Pledged Revenues for the payment of the Notes and any other amounts owed by the Borrower to the NMED pursuant to the Loan Agreements.

[~~**Section 12. OTHER OBLIGATIONS**. Nothing in the Ordinance shall be construed to prevent the Borrower from issuing bonds or other obligations payable from the Pledged Revenues and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. The Borrower must obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues.~~

~~**Section 13. DEFAULT**. The following shall constitute an event of default under the Loan Agreement:~~

~~**(A)** The failure by the Borrower to pay the annual payment due on the repayment of the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or otherwise; or~~

~~**(B)** Default by the Borrower in any of its covenants or conditions set forth under the Loan Agreement *(other than a default described in the previous clause of this section)* for 60 days after the NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.~~

~~**UPON OCCURRENCE OF DEFAULT:**~~

~~**(A)** The entire unpaid principal amount of the Interim and Final Promissory Note plus accrued interest and any fees thereon may be declared by the NMED to be immediately due and payable and the Borrower shall pay the amounts due under Note from the Pledged Revenues, either immediately or in the manner required by the NMED in its declaration, but only to the extent funds are available for payment of the Note. However, if insufficient funds are available for payment of the Note(s), the NMED may require the Borrower to identify sources for additional funds, which may include adjusting the rates charged by the System to ensure repayment of the Note in accordance with applicable laws.~~

~~**(B)** If default by the Borrower is of covenants or conditions required under the federal grant, the Borrower may be required to refund the amount of the Loan disbursed to the Borrower from NMED.~~

~~**(C)** The NMED shall have no further obligation to make payments to the Borrower under the Loan Agreement.~~]

Section [~~14~~] 11. ENFORCEMENT VENUE. The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the Borrower cannot reach agreement regarding disputes as to the terms and conditions of this Loan Agreements, such disputes are to be resolved promptly and expeditiously in the district court of Santa Fe County. The

Borrower agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the Borrower and the subject matter of [~~this~~] these Loan Agreements and waives the right to challenge such jurisdiction.

Section [~~15~~] 12. REMEDIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in the Loan Agreements or in this Ordinance, the NMED may proceed against the Borrower to protect and enforce its rights under the Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in the Ordinance for the enforcement of any proper legal or equitable remedy as the NMED may deem most effective to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of the NMED, or to require the Borrower to act as if it were the trustee of an express trust, or any combination of such remedies. Each right or privilege of the NMED is in addition and cumulative to any other right or privilege under the Ordinance or the Loan Agreements and Notes and the exercise of any right or privilege by the NMED shall not be deemed a waiver of any other right or privilege.

Section [~~16~~] 13. DUTIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in this Ordinance, the Borrower, in addition, will do and perform all proper acts on behalf of and for the NMED to protect and preserve the security created for the payment of the Notes to ensure the payment on the Notes promptly as the same become due. All proceeds derived from the System, so long as the respective Note is outstanding, shall be treated as revenues. If the Borrower fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may proceed to protect and enforce the rights of the NMED as provided in the Ordinance and the Loan Agreements.

Section [~~17~~] 14. TERMINATION. When all obligations under the Loan Agreements and Notes have been paid, the Loan Agreements and Notes shall terminate and the pledge, lien, and all

other obligations of the Borrower under the Ordinance shall be discharged. The principal amount of the Notes, or any part thereof, may be prepaid at any time without penalty at the discretion of the Borrower and the prepayments of principal shall be applied as set forth in the Loan Agreements.

Section [~~18~~] 15. AMENDMENT OF ORDINANCE. This Ordinance may be amended with the prior written consent of the NMED.

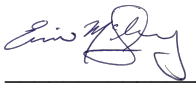
Section [~~19~~] 16. ORDINANCE IRREPEALABLE. After the Loan Agreements and Notes have been executed and delivered, the Ordinance shall be and remain irrepealable until the Notes [~~has~~] have been fully paid, terminated, and discharged, as provided in the Ordinance.

Section [~~20~~] 17. SEVERABILITY CLAUSE. If any section, paragraph, clause, or provision of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of the Ordinance.

Section [~~21~~] 18. REPEALER CLAUSE. All bylaws, orders, Ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, Ordinance, or part thereof, heretofore repealed.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2025.

APPROVED AS TO FORM:



_____

ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2025/Bills/Clarifying Structure of NMED Loan

FIR No. 10631

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** X **Resolution:** _____

Short Title(s): Clarifying the Structure of a Loan Agreement with New Mexico Environment Department

Sponsor(s): Councilor Amanda Chavez, Councilor Carol Romero-Wirth, Councilor Michael Garcia

Reviewing Department(s): Public Utilities Department, Finance Department

Staff Completing FIR: Emily K. Oster **Date:** 11/8/2024 **Phone:** 505-699-2018

Reviewed by City Attorney: _____ **Date:** Feb 21, 2025

Reviewed by Finance Director: Emily K. Oster **Date:** Feb 21, 2025

Summary:

The bill amends Ordinance 2024-6 which authorized the City of Santa Fe's ("City") Public Utilities Department to enter into a loan agreement with the New Mexico Environment Department ("NMED") to accept funding in the form of a one hundred and fifty-one million dollars ($151,000,000) loan through the Clean Water State Revolving Fund ("CWSRF"). The loan proceeds will provide important funding that will be used for high priority water, wastewater, and environmental service infrastructure projects for the purpose of facilitating major repairs to aging infrastructure. Some of these projects involve upgrades to meet Environmental Protection Agency ("EPA") standards. The proposed amendment to the ordinance clarifies the structure of the debt. The purpose of the amendment is to authorize, in place of the single combined $151,000,000 loan agreement, three separate loan agreements: (1) a Wastewater Utility System Loan Agreement in the principal amount of $114,000,000, to be repaid from pledged Net Wastewater System revenue, (2) a Water Utility System Loan Agreement in the principal amount of $17,000,000, to be repaid from pledged Net Water System revenue, and (3) an Environmental Services Division Loan Agreement in the principal amount of $20,000,000, to be repaid from Net Environmental Services Division revenue. The three agreements will replace the single loan agreement for three separate utility systems with three separate revenue streams to be pledged for repayment of the loan amount, financing projects, as approved in the original ordinance. Each loan agreement will include the covenants and provisions applicable to the utility system being improved with the proceeds of that loan, which the City agreed to impose in connection with its outstanding Wastewater Utility System revenue bonds, Water Utility System revenue bonds, and Solid Waste Utility System debt obligations. The 0.01 interest rate and all other material terms of the combined $151,000,000 loan offered by NMED will apply to each separate loan.

Departments Affected:

Public Utilities Department, Finance Department

Consequences of Not Enacting Legislation:

If this legislation is not adopted, the City's NMED's CWSRF financing will not be structured in the most advantageous way for the City. Without this amendment, the entire amount of one hundred and fifty-one million dollar ($151,000,000) loan could be attributed to each of the three utility systems. This lack of specificity could affect utility revenue bond ratings and the capacity of each system to take on new debt in the future.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:
This proposed legislation is an amendment to Ordinance 2024-6. As required by NMAC Rule 20.7.6.15, a related Resolution, Resolution 2024-30 designated signatories on the loan agreement and promissory note for certain water, wastewater and environmental services projects.

Performance and Administrative Implications:
As required by NMAC Rule 20.7.6.15, loan agreements and promissory notes must be finalized and signed after this Ordinance is adopted and finalized.

Fiscal Implications:
The CWSRF loan is a unique opportunity to borrow funding that is necessary to update aging infrastructure at a very low interest rate. The 0.01% interest rate, and all other material terms of the combined $151,000,000 loan offered by NMED will apply to each separate loan for Wastewater, Water and Environmental Services. Loan principal repayment will begin after completed projects are put in service. For the Wastewater system, principal payments of $100,000 per year are expected to begin in FY28, with principal increasing to approximately $4M dollars per year in FY30. For the Water system, principal payments of approximately $566,000 per year are expected to begin in FY28. For the Environmental Services system, principal payments of approximately $666,000 per year are expected to begin in FY28. Loan principal and interest are expected to be repaid from the Water Management Fund cash balance, Wastewater Management Fund cash balance, and Environmental Services Fund cash balance, respectively.

Fiscal Impact

x Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 25	FYE 26	FYE 27	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits	$	$	$				
Operating- Interest Expense	$	$	$				$
Operating- Interest Expense	$	$	$				$
Operating- Interest Expense	$	$	$				$
Operating	$	$	$				$
Total:	$	$	$				$

Expenditure Narrative:

Revenue

Revenue Type	FYE 25	FYE 26	FYE 27	Recurring (R) or Non-recurring (NR)	Fund
General Fund	$	$	$		
Special Revenue	$	$	$		
CIP	$	$	$		
Enterprise- Loan proceeds	$	$	$		
Enterprise- Loan proceeds	$	$	$		
Enterprise- Loan proceeds	$	$	$		
Internal Service	$	$	$		
Trust and Agency	$	$	$		
Federal	$	$	$		
Other	$	$	$		
Total	$	$	$		

Revenue Narrative:

CITY OF SANTA FE

Memorandum

Date: February 19, 2025

To: Governing Body, Finance Committee

From: Alexis Lotero , Assistant Finance Director

Via: Emily Oster, Finance Director EKO

RE: Amending Section 11-2.1 To Establish "Special Appropriations", Budgeted for Up to Three Years

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EXECUTIVE SUMMARY:
The proposed amendment will separate the budgets for operational expenses from those for non-recurring expenses, such as capital outlay, grants, and other one-time funding. It would also allow for up to three-year appropriations for the non-recurring projects. Multi-year budgeting allows for strategic investment in projects that yield long-term benefits. Spreading the non-recurring expenditures over several years allows governments to focus on sustainable investments such as infrastructure improvements, technology upgrades, and workforce development initiatives.

Operationally, multi-year budgeting is more efficient for projects that are limited in scope but require more than one fiscal year to complete. This amendment eliminates the need for staff to prepare and receive approval for budget adjustments to "carry" one-time funding or grants into the subsequent fiscal year. The funding is intended to be appropriated for the duration of the project, even as it is limited to three years. The funding may be reauthorized beyond the three-year period with Governing Body approval.

ATTACHMENTS:
Bill
FIR

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2025-7

INTRODUCED BY:

Mayor Alan Webber

underscored material = new [~~bracketed material~~] = delete

A BILL REGARDING ANNUAL BUDGETS INCLUDING MULTI-YEAR APPROPRIATIONS; AMENDING SECTION 11-2.1 TO CONFORM WITH THE CITY'S CHARTER; ESTABLISH MULTI-YEAR APPROPRIATIONS FOR CAPITAL OUTLAY, GRANT-FUNDED PROJECTS, AND "SPECIAL APPROPRIATIONS"; AND, EFFECTIVE DECEMBER 31, 2025, AMENDING SECTION 11-2.4 TO SUNSET THE FINANCE DIRECTOR'S BUDGET AMENDMENT AUTHORITY TO CARRY-OVER CERTAIN UNEXPENDED APPROPRIATIONS INTO THE NEXT FISCAL YEAR.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 11-2.1 of SFCC 1987 (being Ord. No. 2008-20, § 1, as amended) is amended to read:

11-2.1 Appropriation.

Upon preparation and submission of an annual budget by the mayor [~~city manager~~], the governing body shall adopt the [~~next fiscal year's~~] budget by resolution that includes an operating budget and multi-year appropriations.

A. The final operating budget [~~document~~] shall include summaries of the following:

[~~A.~~] 1. Anticipated revenues by fund;

[~~B.~~] 2. Planned expenditures by fund, department, and category;

[~~C.~~] 3. Planned cash transfers between funds;

[~~D.~~] 4. Estimated beginning and ending cash balances;

[~~E.~~] 5. Costs for personnel salaries and benefits by fund and department;

[~~F.~~] 6. General obligation and revenue bonded debt service; and

7. [~~The annual budget includes all l~~]Line-item detailed reports for all funds and detailed personnel schedules, which must be prepared and be available upon request.

B. The following components may be included in a multi-year section of the budget:

[~~G.~~] 1. Schedules of lease purchase agreements; [~~and~~]

2. C[~~c~~]apital outlay appropriations authorized for up to three years;

3. Grant appropriations authorized for up to the term of the relevant grant;

4. "Special" appropriations, which are limited-duration, non-capital appropriations, authorized for up to three years; and

5. Reauthorizations of multi-year appropriations unexpended during the initial appropriation term and deemed necessary.

6. Deauthorizations of prior-year(s), unexpended, multi-year appropriations.

Section 2. Section 11-2.2 through 11-2.5 of SFCC 1987 (being Ord. No. 2008-20, § 1; SFCC 1981, § 9-3-3; SFCC 1981, § 9-3-4; No. Ord. #2001-37, § 1; and No. Ord. #2003-27, § 1, as amended, respectively) is included for reference without amendments:

11-2.2 Limitation on amount appropriated.

The total amount appropriated by the governing body in any particular fiscal year shall not exceed the probable amount of available money at the beginning of the year plus anticipated

revenue during the fiscal year.

11-2.3 State approval required.

The governing body shall submit its adopted budget to the local government division of the department of finance and administration for review, amendment, if required, and approval. Upon receipt of the approved budget the governing body shall cause such budget to be made a part of the minutes of the governing body.

11-2.4 Annual Audit.

A. The finance director shall complete an annual comprehensive financial report including all city funds. The finance director shall also ensure an annual audit is contracted with the state auditor or an independent auditing firm in accordance with generally accepted auditing standards, state statutes, and other written state auditor's office policies and procedures.

B. A copy of the annual comprehensive financial report shall be distributed to all members of the governing body when released by the state auditor. The auditors completing the audit shall present a summary of the audit report to the finance committee.

C. The city manager shall direct department directors to resolve the findings included in the audit report, and report to the finance committee within ninety (90) days of the presentation of the audit report. Findings not resolved shall be brought back to the finance committee every ninety (90) days until resolutions are final.

11-2.5 Review of fees and charges.

Prior to the mayor's [~~city manager's~~] recommendation of the annual budget to the governing body, the city manager shall direct all departments to review all fees and charges assessed by that department.

Section 3. Section 11-4 of SFCC 1987 (being Ord. No. 2020-33, § 2, as amended) is

amended to read:

11-4 BUDGET ADJUSTMENTS.

When budget adjustments are needed during the fiscal year, the following procedures shall apply:

A. The finance director has the authority to approve budget increases or decreases in revenue or transfers-in or in expenditures, expenses or transfers-out, that reflect increases or decreases in the budget up to and including five thousand dollars ($5,000.00).

B. The city manager has the authority to approve budget increases or decreases in revenue or transfers-in or in expenditures, expenses or transfers-out, that reflect increases or decreases in the budget up to and including sixty thousand dollars ($60,000.00).

C. The governing body shall approve budget increases or decreases in revenue or transfers-in or in expenditures, expenses or transfers-out, that reflect increases or decreases in the budget that are over sixty thousand dollars ($60,000.00).

D. Budget adjustments approved by the finance director, city manager, and the governing body shall be included by fund in a quarterly budget resolution approved by the governing body.

E. Budget adjustment requests will conform to the rules and regulations adopted by the local government division of the department of finance and administration.

F. For budgets associated with grants and grant agreements, the following shall apply:

(1) The finance director may approve grant applications, grant awards, grant match requirements, and agreements up to and including five thousand dollars ($5,000.00).

(2) The city manager may approve grant applications, grant awards, grant match requirements, and grant agreements up to and including sixty thousand

dollars ($60,000.00), or in any amount if the deadline to approve grant applications, grant awards, grant match requirements, or grant agreements occurs before the deadline to include the application or award on the agenda for the governing body's next regularly scheduled meeting, in which case the application or award shall be subject to ratification by the governing body at the next scheduled meeting for which an agenda has not yet been posted.

(3) The city manager may approve budget revenue and related expenditure/expense increases exceeding sixty thousand dollars ($60,000.00) (including budget adjustments or decreases, as applicable), for grants provided that all of the following conditions are met:

(a) The governing body has already approved the grant application including the recommended match (if applicable), unless the deadline to seek or accept the funds occurs before the deadline to include the agreement on the agenda for the governing body's next regularly scheduled meeting, in which case the agreement shall be subject to ratification by the governing body at the next scheduled meeting for which an agenda has not yet been posted; and

(b) The final grant award does not significantly differ from the grant application in the amount, match, requirements, or other requirements on the part of the city; and

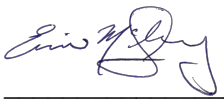
(4) Any city department receiving a grant shall submit a copy of the final award agreement and documentation for the grant to the finance department for financial tracking, reporting and auditing purposes.

G. Until December 31, 2025, or until the city implements software appropriate for accounting for multi-year appropriations for grants and capital projects, whichever is later, [~~U~~]unspent amounts

from multi-year grants and capital projects that the governing body approved in the prior fiscal year may be appropriated in the following fiscal year if the department administering the grant or capital project requests, and the finance director approves, such an appropriation. The appropriation shall be the entire remaining balance and it shall be budgeted for the same purpose and project that were approved by the governing body during the prior fiscal year. The finance department shall include such amounts in a quarterly budget resolution for review and approval of the governing body.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2025.

APPROVED AS TO FORM:



_____

ERIN K. McSHERRY, CITY ATTORNEY

Legislation/2025/Bills/Multi-year Budgeting for Capital and Special Appropriations

FIR No. 10660.1

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** x **Resolution:** _____

Short Title(s): Multi-Year Special Appropriations

Sponsor(s): Mayor Alan Webber

Reviewing Department(s): Finance Department

Staff Completing FIR: Alexis Lotero **Date:** 2/21/2025 **Phone:** (505) 955-6137

Reviewed by City Attorney: _____ **Date:** Feb 21, 2025

Reviewed by Finance Director: Emily K. Oster **Date:** Feb 21, 2025

Summary: This Bill would separate appropriations for operational expenses from those for non-recurring expenses, such as capital outlay, grants, and other one-time funding. It will also sunset the Finance Director's authority to carry-over budgeted funds for capital projects and funds derived from grants for an unlimited number of years.

Departments Affected: All departments

Consequences of Not Enacting Legislation:
If this legislation is not adopted, the City will not establish multi-year appropriations for "special appropriations", capital outlay, and grant-funded projects. Additionally, the Finance Director's budget authority to carry over certain unexpended appropriations into the next fiscal year would remain in place rather than sunsetting.

Conflict, Duplication, Companionship, or Relationship to Other Legislation: This bill relates to all the City's annual budget resolutions and quarterly budget adjustment resolutions.

Performance and Administrative Implications:
Separating appropriations for non-recurring funding from operating appropriations enhances financial stability by enabling policymakers to strategically allocate temporary resources without creating ongoing financial obligations. By planning appropriations over multiple years, governments can ensure that one-time funds contribute to long-term priorities rather than short-term gaps.

Fiscal Implications: The Bill does not have a fiscal impact but will impact budgeting to allow more accurate operating budgets and more realistic budgeting of multi-year projects.

Fiscal Impact

X 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	$	$	$				
Operating	$	$	$				$
Total:	$	$	$				$

Expenditure Narrative:

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:

Email: aclotero@santafenm.gov

CITY OF SANTA FE

Memorandum

Date: February 18, 2025

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

From: Fred Heerbrandt, PE Engineering Supervisor

Via: Jesse Roach, Interim Public Utilities Department Director
Regina Wheeler, Public Works Director

RE: Authorizing Representatives and Agents for NMED Agreement SAP 24-I2457-GF

EXECUTIVE SUMMARY:

The Resolution designates authorized representatives and agents for an agreement with New Mexico Environment Department (NMED) regarding Agreement SAP 24-I2457-GF ("Agreement"). The Agreement makes available two hundred and ten thousand dollars ($210,000), appropriated by the New Mexico State Legislature for a project to plan, design, and construct improvements on Jemez Road, including a sewer line south of Airport Road to improve residential septic systems.

BACKGROUND:

The New Mexico Environment Department, through Article X.B. (v) of the Grant Agreement, requires that the City of Santa Fe as the grantee, to agree that the "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". Adoption of this Resolution will satisfy this requirement and allow the City to enter into the Grant Agreement. The Grant Agreement will be presented to the Governing Body in an action separate from this Resolution; and this Resolution will not be implicated if the Governing Body does not later approve the grant agreement.

ATTACHMENTS:

Resolution
FIR

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2025-__

INTRODUCED BY:

Councilor Amanda Chavez

A RESOLUTION

AUTHORIZING REPRESENTATIVES AND AGENTS FOR AN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT, REGARDING AGREEMENT NUMBER SAP 24-I2457-GF, TO PLAN, DESIGN, AND CONSTRUCT IMPROVEMENTS ON JEMEZ ROAD, INCLUDING A SEWER LINE SOUTH OF AIRPORT ROAD, TO IMPROVE RESIDENTIAL SEPTIC SYSTEMS.

WHEREAS, in the Laws of 2024, Chapter 66, Section 20, Subsection 103, the New Mexico Legislature made an appropriation to the New Mexico Environment Department ("NMED"), for funds from which NMED is making available to the City of Santa Fe ("Grantee" OR "City") through NMED Agreement Number SAP 24-I2457-GF ("Agreement"), incorporated as Attachment A, in the amount of two hundred and ten thousand ($210,000), to plan, design, and construct improvements on Jemez Road, including a sewer line south of Airport Road to improve residential septic systems in the City of Santa Fe in Santa Fe County; and

WHEREAS, Article X. B. (v) of the Agreement, states that "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", and adopting this resolution will satisfy this requirement; and

WHEREAS, in a letter dated August 24, 2023, the New Mexico Department of Finance and Administration ("DFA") took the position that it required the City to initiate a fiscal agent relationship in order for the City to utilize its current State Capital appropriations, and DFA renewed this position in a letter dated August 20, 2024, for all current Capital outlay appropriations; and

WHEREAS, as a result of the DFA's position, the City entered into a governmental services agreement, incorporated as Attachment B, with North Central Economic Development District ("NCEDD") for fiscal agent services, in which NCEDD agreed to review and sign Requests for Payment for permissible expenditures, on December 19, 2023; and

WHEREAS, the terms of Amendment No. 3 to the Intergovernmental Service Agreement, Appropriation ID No. I2457, included as part of Attachment B, includes the project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that the following provisions shall apply to the Agreement:

A. The person listed below, or their successor, is the Grantee's official representative and is authorized to sign the Agreement:

Grantee:	City of Santa Fe
Name:	Alan Webber
Title:	Mayor
Address:	PO Box 909
	Santa Fe, NM 87504-0909
Email:	mayor@santafenm.gov
Telephone:	(505) 955-6590

B. The people listed below, or their successors, are the Grantee's Fiscal Agent and

the Official Representative, who are authorized, respectively, to sign Request for Payment (Fiscal Agent) and to act as the project contact and sign all other documents necessary to fulfill the Grant Agreement and the Requirements (Public Works Director):

Grantee:	City of Santa Fe
Name:	Felicity Fonseca;
Title:	Community Development Director, North Central New Mexico Economic Development District, Contracted Fiscal Agent;
Address:	644 Don Gaspar Ave. Santa Fe, Nm 87505
Email:	felicityf@ncnmedd.com
Telephone:	(505) 356-9098
Name:	Regina Wheeler
Title:	Public Works Director
Address:	737 Agua Fria St. Santa Fe, Nm 87501
Email:	rawheeler@santafenm.gov
Telephone:	(505) 955-6622

C. The person listed below, or their successor, is the Capital Projects Monitoring System (CPMS) contact who is designated to update the CPMS database monthly per Article VIII. A. of the Intergovernmental Grant Agreement:

Grantee:	City of Santa Fe
Name:	David Chapman
Title:	Grant Administrator

Address: P.O. Box 909

Santa Fe, NM, 87504

Email: dachapman@santafenm.gov

Telephone: (505) 955-6251

D. The person listed below, or their successor, is the contact who is designated to receive Notice of Obligations (NOOs):

Grantee: City of Santa Fe

Name: Jesse Roach

Title: Interim Utilities Director

Address: 801 W. San Mateo

Santa Fe, NM, 87504

Email: jdroach@santafenm.gov

Telephone: (505) 955-4309.

BE IT FURTHER RESOLVED, the Resolution Form included on page 18 of 21 in Attachment A, SAP 24-I2457-GF is the form used for this Resolution.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2025.

_____

ALAN WEBBER, MAYOR

ATTEST:

_____

ANDRÉA SALAZAR, CITY CLERK

APPROVED AS TO FORM:

_____

ERIN K. McSHERRY, CITY ATTORNEY

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
CAPITAL APPROPRIATION PROJECT
City of Santa Fe
SAP 24-I2457-GF

THIS AGREEMENT between the New Mexico Environment Department hereinafter called the "Department" or NMED, and City of Santa Fe hereinafter called the "Grantee" becomes effective on the date signed by the NMED.

RECITALS

WHEREAS, in the Laws of 2024, Chapter 66, Section 20, Subsection 103 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, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

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:

SAP 24-I2457-GF $210,000.00 APPROPRIATION REVERSION DATE: June 30, 2028

Laws of 2024, Chapter 66, Section 20, Subsection 103, Two Hundred Ten Thousand Dollars, ($210,000.00), from the General Fund to plan, design and construct improvements on Jemez road, including a sewer line south of Airport road, to improve residential septic systems in Santa Fe in Santa Fe county;

The Grantee's total reimbursements shall not exceed Two Hundred Ten Thousand Dollars, $210,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ($0.00)[1], if applicable, Two Hundred Ten Thousand Dollars, $210,000.00 (the "Adjusted Appropriation Amount").

[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.

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." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued, and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of 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

[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.

(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. The 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.

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 on their Resolution of Signatory Authority as their representatives with all matters concerning this Agreement.

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

NMED Program Administrator
NMENV-cpbsap@state.nm.us

505-670-3583
505-670-3615

NMED Project Manager
Name: Stephanie DuBois
Email: stephanie.dubois@env.nm.gov
Telephone:505-222-9568

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

If 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 the Grantee a minimum of thirty (30) days' 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 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.

The Grantee shall respond to such requests for additional information within a reasonable amount 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:

(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 ~~a~~approved as evidenced by an unpaid invoice received by the Grantee from a third-party contractor or vendor; or

(ii) No more than twenty (20) days from date of Early Termination; or

(iii) For reverting projects, no more than twenty (20) days after June 30 reversion unless advised in writing differently.

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 the 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 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 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 because 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 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 New Mexico Environment Department 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 New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department 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.

[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

New Mexico Environment Department

_____
Bureau Chief, NMED Construction Programs Bureau
Signed pursuant to the February 19, 2024 Secretary of Environment Delegation Order

IN WITNESS WHEREOF, the City of Santa Fe has agreed to this Appropriation Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jan 15, 2025 15:41 MST)

ASSISTANT CITY ATTORNEY

FINANCE:

_____

EMILY OSTER, FINANCE DIRECTOR

Exhibit 1 – Request for Payment
Not for NMED use. NMED Disbursement Form is below.

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information
(Make sure information is complete & accurate)

A. Grantee:
B. Address:
(Complete Mailing, including Suite, if applicable)
City, State, Zip
C. Contact Name/Phone #:
D. Grant No:
E. Project Title:
F. Grant Expiration Date:

II. Payment Computation

A.	Payment Request No.	
B.	Grant Amount:	$ 0.00
C.	AIPP Amount *(If Applicable)*:	$ 0.00
D.	Funds Requested to Date:	$ 0.00
E.	Amount Requested this Payment:	$ 0.00
F.	Reversion Amount *(If Applicable)*:	$ 0.00
G.	Grant Balance:	$ 0.00

H. ☐ GF ☐ GOB ☐ STB *(attach wire if first draw)*
I. ☐ Final Request for Payment *(If Applicable)*

III. Fiscal Year : 2024 (July 1, 2023-June 30, 2024)
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** *(If applicable)*

Printed Name

Date:

Grantee Representative

Printed Name

Date:

(State Agency Use Only)

Vendor Code: **Fund No.:** **Loc No.:**

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

September 2014

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Project Manager

FROM: Grantee Entity: _____

Official Representative: _____ _____
Signature

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: $ 0.00

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: Project Manager

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.

New Mexico Environment Department (NMED)
Capital Appropriations Certification Document
Article IX. A. (ii) and (iii)
FA--JEMEZ RD CONSTRUCT - SAP 24-I2457-GF

Payment Request No_____

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

Rev. May 2024		NEW MEXICO ENVIRONMENT DEPARTMENT			
		CONSTRUCTION PROGRAMS BUREAU			

NMED DISBURSEMENT REQUEST

SPECIAL APPROPRIATIONS PROGRAM (SAP)

A. NAME OF ENTITY		C. DISBURSEMENT REQUEST NUMBER	
B. PROJECT NUMBER		D. GRANT AMOUNT	

	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees								
Other Professional								
Service Fees								
Inspection Fees								
Property Acquisition								
Construction Cost								
Planning Cost								
Equipment								
Other Costs (specify)								
Contingencies								
TOTAL								

Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.		Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.	

Certification: Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; 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.

Reporting Certification: I hereby certify to the best of my knowledge and belief, that the database reporting is up to date; to include the accuracy of the expenditures and grant balance, project status, project phase, achievements and milestones, and in compliance with Artile VIII of the Capital Outlay Grant Agreement.

Signature of Official Representative:	Typed or Printed Name:	Phone:	Date:
X			

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)
Resolution Number

Whereas, the **Governing Body of the City of Santa Fe** of **Santa Fe** County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as **Project Number SAP 24-I2457-GF**

NOW THEREFORE, BE IT RESOLVED by the named applicant that:

Alan Webber, Mayor or successor is authorized to sign the Grant Agreement for this project, and

Regina Wheeler, Public Works Director and Felicity Fonseca, NCNMEDD, Contracted Fiscal Agent, or successor are the OFFICAL REPRESENTATIVE(S) who are authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Project Description, Request for Payment and to act as the project contact, and

David Chapman, Grant Administrator, or successor is the Capital Projects Monitoring System (CPMS) contact who is designated to update the CPMS database monthly per Article VIII. A. of the Intergovernmental Grant Agreement.

Jesse Roach, Interim Utilities Director, or successors is the CONTACT who is designated to receive Notice of Obligations (NOO'S).

PASSED, APPROVED, AND ADOPTED: ____

Name, Mayor / Chairperson / Director / Officer, Title, Community / Utility

_____ _____

(Signature) **Date**

(SEAL)

ATTEST:

_____

(Municipal Clerk)

Name of Grantee: City of Santa Fe Project Number: SAP 24-I2457-GF

Current Authorized Signatures (submit with Signature Resolution, update when necessary)

Authorized to Sign Agreement			
Name		Name	
Title		Title	
Signature		Signature	
Address		Address	
Email		Email	
Phone		Phone	
Official Representatives authorized to sign Disbursement Requests and all other documents.			
Name		Name	
Title		Title	
Signature		Signature	
Address		Address	
Email		Email	
Phone		Phone	
Alternate Official Representative, to sign Disbursement Requests and all other documents and act as the Point of Contact.			
Name		Name	
Title		Title	
Signature		Signature	
Address		Address	
Email		Email	
Phone		Phone	
Designated Agent or Employee that will make monthly CPMS updates			
Name		Name	
Title		Title	
Signature		Signature	
Address		Address	
Email		Email	
Phone		Phone	
Notice of Obligations (NOO's)			
Name		Name	
Title		Title	
Signature	No Signature Required	Signature	No Signature Required
Address		Address	
Email		Email	
Phone		Phone	

ATTACHMENT B
TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY

ARTICLE 1 REVIEW

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project for the creation of a notice of obligation. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.

B. If grant funds are used for construction, a site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.

C. If grant funds are used for construction, the Grantee will submit notice of the award and a copy of the executed construction contract documents.

D. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.

E. All daily construction inspection reports shall be made available to the NMED upon request.

F. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

ARTICLE 2 NMED OVERSIGHT

NMED oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 CLOSEOUT

A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.

B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.

C. If the grant funds are used for construction, final payment will be made after the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

i. A certificate of substantial completion including punch list items.

ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.

iii. A written consent of the surety, if any, to final payment.

iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.

v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.

vi. Certification letter of project acceptance by the Grantee and the Grantee’s project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.

vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

ALTERNATIVE FISCAL AGENT
ATTACHMENT FA

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this ____day of _____, 20__, by and between the New Mexico Environment Department, hereinafter called the "Department", and Santa Fe, City of, hereinafter called the "Grantee", by the North Central NM Economic Development District, authorized agent, hereinafter called "Fiscal Agent."
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 (20), Subsection (103), 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, the Grantee contracted with the Fiscal Agent for capital outlay fiscal agency services as set forth in Memorandum of Understanding, and

WHEREAS, the Grantee requests the Fiscal Agent act as the authorized agent for capital outlay projects awarded by the New Mexico legislature and administered by the Department.

WHEREAS, the Department recognizes, and will contract with the Grantee through its authorized agent, and

WHEREAS, the Department: successor agency, may enter into grants and contracts as appropriated by law.

MEMORANDUM OF UNDERSTANDING
BETWEEN
Santa Fe, City of (Grantee)

AND
North Central NM Economic Development District (Fiscal Agent)

This Memorandum of Understanding (MOU) confirms that the Grantee is working with the Fiscal Agent for the administration of a New Mexico legislative special appropriation to the New Mexico Environment Department (NMED).

In accordance with the terms of the NMED Grant Agreement (Article X, B., (v)), the governing board of the Grantee will adopt a resolution "authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment." The resolution will also authorize the Fiscal Agent and a Fiscal Agent signatory authority.

The special appropriation grant agreement is:
SAP 24-I2457-GF, in the amount of Two Hundred Ten Thousand Dollars ($210,000.00), expiring 6/30/2028 and has been appropriated "to plan, design and construct improvements on Jemez road, including a sewer line south of Airport road, to improve residential septic systems in Santa Fe in Santa Fe county;"

It is mutually agreed that the Grantee will determine the specific work to be completed, will oversee construction, and will own and operate the improvements resulting from completion of the Project. By this MOU, it is understood between the parties that the Fiscal Agent is authorized to act for the Project, and will be responsible for administration, procurement, and payments related to the project.

The Fiscal Agent shall not be compensated from any grant funds for services rendered, or credited for services rendered, during the term of this MOU or during the duration of the Project.

This MOU shall be in effect for the duration of the grant agreement and terminates if the Grantee designates a new Fiscal Agent, or when the grant agreement expires or the project is complete and all close out documents are received, whichever comes first. The parties affirm their understanding and agreement by their signatures below. The parties may enter into a contractual agreement related to this project, but the terms of the agreement shall not conflict with the terms of this MOU or the Resolution.

IN WITNESS WHEREOF, the parties have duly executed this MOU as of the date of execution by the Fiscal Agent.

GRANTEE:

_____

Signature of Official with Authority to Bind Grantee

By:_____

(Type or Print Name)

Its:_____

(Type or Print Title)

_____

Date

FISCAL AGENT:

_____

Signature of Official with Authority to Bind Fiscal Agent

By:_____

(Type or Print Name)

Its:_____

(Type or Print Title)

_____

Date

IN WITNESS WHEREOF, the City of Santa Fe has agreed to this Appropriation Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jan 15, 2025 15:41 MST)

ASSISTANT CITY ATTORNEY

FINANCE:

_____

EMILY OSTER, FINANCE DIRECTOR

INTERGOVERNMENTAL SERVICES AGREEMENT
BETWEEN CITY OF SANTA FE AND
NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT
FOR FISCAL AGENT SERVICES

WHEREAS, the State of New Mexico appropriated funding for the purposes of improvements in the City of Santa Fe ("City") to the State of New Mexico, Department of Finance and Administration, Local Government Division, in the laws of Laws of 2021, Chapter 138, as detailed below ("Projects");

WHEREAS, NCNMEDD acknowledges that the appropriations for the Projects are intended for City;

WHEREAS, City, a municipality within Santa Fe County and the State of New Mexico, agrees to engage North Central New Mexico Economic Development District ("NCNMEDD") in providing fiscal agency services in relation to the Projects.

NOW, THEREFORE, the parties do mutually agree as follows:

This Agreement is entered into by and between City and NCNMEDD pursuant to the following purposes, conditions, and terms:

A. PURPOSE

The purpose of this Agreement is for NCNMEDD to provide fiscal agent services in connection with the Projects as specifically appropriated under New Mexico Legislative Appropriation Agreements identified as follows:

ApprID	Leg. Session	Appropriation Title	Year	Ch	Sect	Agency		Amount	Project Description
F2900	2021	SANTA FE PARKS UPGRADE	2021	138	29/341	341	Finance & Administration	1,000,000	to plan, design, construct, repair, improve and equip parks in Santa Fe in Santa Fe county;
F2902	2021	SANTA FE TIERRA CONTENTA TRAIL CONSTRUCT	2021	138	29/343	341	Finance & Administration	300,000	to plan, design and construct a trail in the Tierra Contenta subdivision in Santa Fe in Santa Fe county;
F2903	2021	SANTA FE MIDTOWN INFRA DES CONSTRUCT	2021	138	29/344	341	Finance & Administration	1,000,000	to plan, design, construct and improve infrastructure for the midtown Santa Fe property in Santa Fe in Santa Fe county;
F2899	2021	SANTA FE HOMEBOUND MEALS PROGRAM IMPROVE	2021	138	29/340	341	Finance & Administration	250,000	to plan, design, renovate, construct, improve and equip a facility for a meals program serving homebound and special needs individuals in Santa Fe in Santa Fe county;
F2901	2021	SANTA FE SOUTHSIDE TEEN CTR CONSTRUCT	2021	138	29/342	341	Finance & Administration	1,805,000	to plan, design, construct, furnish and equip a teen and resource center on the south side of Santa Fe in Santa Fe county;

Other projects may be included as agreed upon in writing and by amendment between the Parties.

B. SCOPE OF WORK

NCNMEDD's services in support of the above purpose shall be to provide fiscal agency services associated with the Projects, including:

1. NCNMEDD Fiscal Agency Services:

- Ensure that grant funds are expended in compliance with all applicable laws, regulations, and grant agreement and the transactions are appropriately accounted for in compliance with such laws, regulations, and grant agreement;
- Ensure safeguarding of grant funds and assets acquired with grant funds and proper accounting thereof in compliance with applicable laws, regulations, and grant agreement;
- Act as liaison between City and appropriate New Mexico state agencies as needed;
- Complete all required quarterly and financial reporting with information provided by City;
- Review and sign-off on project invoices to the appropriate State agency in a timely manner; and

- Work with the State on providing direct project reimbursements to City and act as a facilitator for such reimbursements as needed.

2. City Role and Responsibilities
   - City understands it remains ultimately responsible for executing and complying with all applicable laws, regulations, and grant agreement requirements such as flow down provisions, executing procurement responsibilities, and subcontractor management, as well as project, grant, and financial management.

C. TIMEFRAME

Work pursuant to this Agreement shall be effective no sooner than the date of last party signature below, and shall conclude upon notice by either party pursuant to paragraph I, but no later than one month following the reversion date of the appropriations, except as amended and mutually agreed upon in writing.

D. COMPENSATION:

NCNMEDD has agreed to provide the agreed upon services at three percent (3%) of the dollar amount(s) the City expends during the term of this Agreement towards the completion of the Projects, as those amounts were appropriated. Billing for services to City shall occur by NCNMEDD no more than on a monthly basis. The City will not use funds from this grant to make such payments.

E. RECORDS AND RECOVERY:

NCNMEDD shall maintain appropriate records of services rendered during the Agreement term and retain them for a period of three (3) years after the grant has been closed.

F. ACCESS TO INFORMATION

City and its contractors and subcontractors shall provide information, as needed, for purposes and work described in this Agreement. NCNMEDD will be included and copied on all invoices and reports, prior to City's submission to the appropriate State agency.

G. OWNERSHIP OF PROJECTS

All documents, capital improvements, and project assets produced pursuant to this Agreement shall be the property of City which shall assume full administrative responsibility for the life of the project; or the State grant agreement required period, whichever comes first.

H. LIMITATION OF LIABILITY

This Agreement shall not create a general liability of the constituent members of NCNMEDD.

City shall hold NCNMEDD harmless with respect to any damages, expenses, or claims arising or in connection with any negligent acts, errors, or omissions performed by City under this Agreement. This term shall not limit NCNMEDD liability with respect to NCNMEDD's negligence or willful misconduct.

I. MODIFICATION AND TERMINATION

Any modifications or amendments to this Agreement shall be in writing, and when signed by both parties shall be made part of the Agreement. This Agreement may be terminated by either party upon thirty (30) days written notice to the other.

J. CERTIFICATION

City shall comply with the requirements of all applicable laws, rules, and regulations, and shall assume full responsibility for payment of federal, state, and local taxes and contributions imposed or required under Social Security, Workers Compensation and income tax laws. City is required to follow all State procurement regulations and it is City obligation and responsibility to follow all State requirements as certified in the project bond questionnaire process and as included in associated State grant agreements, including reporting and drawdown requirements, such documents to be filed for each project in conjunction with this agreement.

K. ADEQUATE APPROPRIATIONS

Performance of this agreement is contingent upon sufficient appropriations and authorization being made for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice being given by NCNMEDD to City. NCNMEDD's decision as to whether sufficient appropriations are available shall be accepted by City and shall be final. If NCNMEDD proposes an amendment to the Agreement to unilaterally reduce its Fiscal Agency Services, City shall have the option to terminate the Agreement or agree to negotiate for reduced Fiscal Agency Services: within thirty (30) days of receipt of the proposed amendment.

L. PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 to -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.

M. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing

and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid as follows:

To: City
City Manager John Blair
City of Santa Fe
200 Lincoln
Santa Fe, New Mexico, 87501j

To NCNMEDD:
Monica Abeita Executive Director NCNMEDD
3900 Paseo del Sol
Santa Fe, NM 87507

N. DISPUTE RESOLUTION

The parties to this agreement agree that in the event of a dispute that may arise hereunder, which dispute cannot be reasonably resolve, they will submit to mediation by a neutral mediator, the cost of which will be borne equally by both parties. Disputes that cannot be resolved by mediation shall be subject to the laws of the State of New Mexico under the jurisdiction of the First Judicial District Court.

O. BREACH AND DEFAULT

If either party commits a breach or default in the performance or observance of any of its obligations under this agreement and such breach or default continues and is not corrected within thirty (30) days of written notification of such breach or default by either party to the other, the non-breaching or non-defaulting party shall have the right to terminate this agreement by giving notice to the breaching or defaulting party.

P. ASSIGNMENT

No portion of this agreement may be assigned to another party without the express written consent of the City and NCNMEDD.

APPROVED THIS 19th DAY OF December, 2023, BY CITY.

NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT:

BY: Monica Abeita 12/8/23

Monica Abeita, Executive Director Date

IN WITNESS WHEREOF, the City of Santa Fe has agreed to this Waiver as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: Dec 19, 2023

ATTEST:

Geralyn Cardenas (Dec 19, 2023 14:06 MST)

GERALYN CARDENAS, INTERIM CITY CLERK XIV

GB MTG 12/13/23

CITY ATTORNEY'S OFFICE:

Erin McSherry

Erin McSherry (Dec 8, 2023 13:36 MST)

ERIN MCSHERRY, CITY ATTORNEY

Original Contract Item# 23-0688
SWPA/GSA/Coop/RFP/ITB #: N/A

CITY OF SANTA FE
AMENDMENT No. 3 TO
Intergovernmental Service Agreement
ITEM#23-0688

This AMENDMENT No 3 (the "Amendment") amends the INTERGOVERNMENTAL SERVICES AGREEMENT BETWEEN CITY OF SANTA FE AND NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT FOR FISCAL AGENT SERVICES, dated December 19, 2023 (the "Agreement"), between the City of Santa Fe (the "City") and the North Central New Mexico Economic Development District (NCNMEDD). The date of this Amendment shall be the date when it is executed by the City and the NCNMEDD whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, the NCNMEDD has agreed to provide fiscal agent services in connection with the Capital Projects specified under the Agreement.

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

1. PURPOSE:

Article A of the Agreement is amended to add twenty-two (22) capital appropriations as seen on Exhibit A.

2. CONTRACT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No.3 to the Agreement as of the dates set forth below.

CITY OF SANTA FE:

Alan Webber (Nov 15, 2024 09:56 MST)

ALAN WEBBER, MAYOR

DATE: Nov 15, 2024

CONTRACTOR:
NCNMEDD

Monica Abeita (Oct 11, 2024 13:22 MDT)

MONICA ABEITA
EXECUTIVE DIRECTOR

DATE: Oct 11, 2024

ATTEST:

Andrea Salazar (Nov 15, 2024 11:02 MST)

ANDREA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez (Oct 11, 2024 13:26 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

FINANCE DIRECTOR

Approp ID	Leg. Session	Appropriation Title	Approp. Amount	Reversion Date	Funding Agency	Funding Source
I2455	2024	Paseo Real Wastewater Facility	$1,600,000	30-Jun-28	NMED	General Fund
I2457	2024	Jemez Rd Sewer	$210,000	30-Jun-28	NMED	General Fund
I2458	2024	Vereda de Velencia WWater	$160,000	30-Jun-2028	NMED	General Fund
I3023	2024	Police Dept. Equipment Purchase	$250,000	30-Jun-2026	DFA	General Fund
I3134	2024	Fire Stn 2 Construct	$250,000	30-Jun-2028	DFA	General Fund
I3136	2024	Soccer Valley MRC Construct	$3,425,000	30-Jun-2028	DFA	General Fund
I3138	2024	Los Prados Park	$438,000	30-Jun-2028	DFA	General Fund
I3141	2024	Fire SCBA Equip Purchase	$250,000	30-Jun-2026	DFA	General Fund
I3142	2024	Ft Marcy Park Ren	$5,000,000	30-Jun-2028	DFA	General Fund
I3143	2024	Permanent and Transitional Housing	$400,000	30-Jun-2028	DFA	General Fund
I3144	2024	Railyard Bldg. Upgrade	$100,000	30-Jun-2028	DFA	General Fund
I3145	2024	Railyard Multipurpose Bldg	$175,000	30-Jun-2028	DFA	General Fund
I3146	2024	Regional Airport Phase 2 Improve	$2,000,000	30-Jun-2028	DFA	General Fund
I3147	2024	River Park Pedestrian Bridge	$240,000	30-Jun-2028	DFA	General Fund
I3318	2024	NM599-Airport Access Road	$4,500,000	30-Jun-2028	NMDOT	General Fund
I3319	2024	Rufina St. & Lopez Lane Intersection	$50,000	30-Jun-2028	NMDOT	General Fund
I3320	2024	Paseo del Sol Extension	$50,000	30-Jun-2028	NMDOT	General Fund
I3321	2024	St. Michael's Rail Trail Underpass	$100,000	30-Jun-2028	NMDOT	General Fund
I4219	2024	El Museo Improvements	$126,950	30-Jun-2026	DFA	Severance Tax Bond
I4220	2024	Homebound Meals	$100,000	30-Jun-2028	DFA	General Fund
I4221	2024	Municipal Court Renovations	$29,843	30-Jun-2028	DFA	General Fund
I4222	2024	Supportive Housing	$844,470	30-Jun-2026	DFA	General Fund

FIR No. 10659.0

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** _____ **Resolution:** X

Short Title(s): Authorized Representatives and Agents for NMED Agreement SAP 24-I2457-GF

Sponsor(s): Councilor Amanda Chavez

Reviewing Department(s): Public Works Department

Staff Completing FIR: Regina Wheeler **Date:** 1/31/2025 **Phone:** (505) 690-4197

Reviewed by City Attorney: _____ **Date:** Mar 7, 2025

Reviewed by Finance Director: Emily K. Oster **Date:** Mar 7, 2025

Summary:
The Resolution designates authorized representatives and agents for an agreement with New Mexico Environment Department (NMED) regarding Capital Appropriation Project SAP 24-I2457-GF ("Agreement"). The Agreement makes available two hundred and ten thousand dollars ($210,000), appropriated by the New Mexico Legislature for a project to plan, design, and construct improvements on Jemez Road, including a sewer line south of Airport Road to improve residential septic systems.

Departments Affected:
Public Works Department and Public Utilities Department.

Consequences of Not Enacting Legislation:
If this legislation is not adopted, the City of Santa Fe ("City") will not satisfy Article X. B. (v) of the Agreement, which requires the Governing Body to adopt a resolution authorizing the person identified as the official representative of the City to sign the Agreement and to sign Requests for Payment. Additionally, without the adoption of this Resolution the City would not receive NMED funding in the amount of two hundred and ten thousand dollars ($210,000).

Conflict, Duplication, Companionship, or Relationship to Other Legislation:
The Governing Body will be approving the agreement through a separate action.

Performance and Administrative Implications:
Public Utilities Staff will plan, design, and construct improvements on Jemez Road including a sewer line south of Airport Road to improve residential septic systems in association with this Agreement. Public Utilities Department and Finance Department staff will also administer the grant.

Fiscal Implications:
**Although there is not a fiscal impact for authorizing and naming agents, it is worth pointing out that Amendment No. 1 to the Intergovernmental Agreement states that "NCNMEDD has agreed to provide the

agreed upon services at one percent (1%) of the dollar amount(s) the City expends during the term of this Agreement towards the completion of the Projects". If the City expends the total agreement amount of two hundred and ten thousand dollars ($210,000), then NCNMEDD will receive two thousand one hundred dollars ($2,100) as one percent (1%) of expense. The Governing Body will approve the agreement through a separate action and will budget funds for fiscal agent fees in a separate action.

Fiscal Impact

____X____ 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	$	$	$				
Operating	$	$	$				$
Total:	$	$	$				$

Expenditure Narrative:
**See "Fiscal Implications" narrative above.

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:

Email: rawheeler@santafenm.gov

Signature:

Email: pfheerbrandt@santafenm.gov

Signature:

Email: jdroach@santafenm.gov

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO RESOLUTION NO. 2025-__
SAP 24-I2457-GF Jemez Road Sewer ($210,000) Authorized Representatives

Mayor and Members of the City Council:

I propose the following amendment(s) to Resolution No. 2025-___:

AUTHORIZING REPRESENTATIVES AND AGENTS FOR AN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT, REGARDING AGREEMENT NUMBER SAP 24-I2457-GF, TO PLAN, DESIGN, AND CONSTRUCT IMPROVEMENTS ON JEMEZ ROAD, INCLUDING A SEWER LINE SOUTH OF AIRPORT ROAD, TO IMPROVE RESIDENTIAL SEPTIC SYSTEMS.

I propose the following amendment(s) to

1. On page 3, line 13, ***delete*** "Regina Wheeler" and ***replace*** with "Stan Holland".
2. On page 3, line14, ***delete*** "Public Works Director" and ***replace*** with "PE Public Utilities Engineer".
3. On page 3, lines 15 and 16, ***delete*** "737 Agua Fria St. Santa Fe, Nm 87501" and ***replace*** with "73 Paseo Real Santa Fe, NM, 87508".
4. On page 3, line 17, ***delete*** "rawheeler@santafenm.gov" and ***replace*** with "tsholland@santafenm.gov".
5. On page 3, line 18, ***delete*** "(505) 955-6622" and ***replace*** with "(505) 955-4637".
6. On page 4, line 8, ***delete*** "Jesse Roach" and ***replace*** with "David Chapman".
7. On page 4, line 9, ***delete*** "Interim Utilities Director" and ***replace*** with "Grant Administrator".
8. On page 4, lines 10 and 11, ***delete*** "801 W. San Mateo Santa Fe, NM, 87504" and ***replace*** with "P.O. Box 909 Santa Fe, NM, 87504".
9. On page 4, line 12, ***delete*** "jdroach@santafenm.gov" and ***replace*** with dachapman@santafenm.gov.
10. On page 4, line 13, ***delete*** "(505) 955-4309" and ***replace*** with "(505) 955-6251".
11. ***Replace*** Attachment A, pages 6-31, "State of New Mexico Environment Department Capital Appropriation Project City of Santa Fe", Agreement No. SAP 124-12457-GF, with the attached, revised Attachment A, "State of New Mexico Environment Department Capital Appropriation Project City of Santa Fe", Agreement No. SAP 24-12457-GF.

This amendment does change the caption. ___

This amendment does not change the caption. __X_

Respectfully submitted,

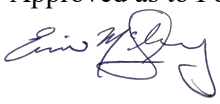
Amanda Chavez

Amanda Chavez (Mar 17, 2025 15:23 MDT)

10659.1(A)

Amanda Chavez, Councilor

Approved as to Form:



_____
Erin K. McSherry, City Attorney

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

_____
Andréa Salazar, City Clerk

10659.1(A)

Attachment A

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
CAPITAL APPROPRIATION PROJECT
City of Santa Fe
SAP 24-I2457-GF

THIS AGREEMENT between the New Mexico Environment Department hereinafter called the "Department" or NMED, and City of Santa Fe hereinafter called the "Grantee" becomes effective on the date signed by the NMED.

RECITALS

WHEREAS, in the Laws of 2024, Chapter 66, Section 20, Subsection 103 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, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

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:

SAP 24-I2457-GF $210,000.00 APPROPRIATION REVERSION DATE: June 30, 2028

Laws of 2024, Chapter 66, Section 20, Subsection 103, Two Hundred Ten Thousand Dollars, ($210,000.00), from the General Fund to plan, design and construct improvements on Jemez road, including a sewer line south of Airport road, to improve residential septic systems in Santa Fe in Santa Fe county;

The Grantee's total reimbursements shall not exceed Two Hundred Ten Thousand Dollars, $210,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ($0.00)[1], if applicable, Two Hundred Ten Thousand Dollars, $210,000.00 (the "Adjusted Appropriation Amount").

[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.

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." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued, and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of 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

[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.

(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. The 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.

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 on their Resolution of Signatory Authority as their representatives with all matters concerning this Agreement.

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

NMED Program Administrator
NMENV-cpbsap@state.nm.us

505-670-3583
505-670-3615

NMED Project Manager
Name: Stephanie DuBois
Email: stephanie.dubois@env.nm.gov
Telephone:505-222-9568

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

If 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 the Grantee a minimum of thirty (30) days' 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 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.

The Grantee shall respond to such requests for additional information within a reasonable amount 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:

(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 ~~a~~approved as evidenced by an unpaid invoice received by the Grantee from a third-party contractor or vendor; or

(ii) No more than twenty (20) days from date of Early Termination; or

(iii) For reverting projects, no more than twenty (20) days after June 30 reversion unless advised in writing differently.

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 the 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 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 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 because 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 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 New Mexico Environment Department 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 New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department 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.

[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

New Mexico Environment Department

_____
Bureau Chief, NMED Construction Programs Bureau
Signed pursuant to the February 19, 2024 Secretary of Environment Delegation Order

IN WITNESS WHEREOF, the City of Santa Fe has agreed to this Appropriation Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault

Kevin L. Nault (Jan 15, 2025 15:41 MST)

_____

ASSISTANT CITY ATTORNEY

FINANCE:

_____

EMILY OSTER, FINANCE DIRECTOR

Exhibit 1 – Request for Payment
Not for NMED use. NMED Disbursement Form is below.

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information
(Make sure information is complete & accurate)

A. Grantee: _____
B. Address: _____
(Complete Mailing, including Suite, if applicable)
_____
City, State, Zip
C. Contact Name/Phone #: _____
D. Grant No: _____
E. Project Title: _____
F. Grant Expiration Date: _____

II. Payment Computation

A.	Payment Request No.	
B.	Grant Amount:	$ 0.00
C.	AIPP Amount *(If Applicable)*:	$ 0.00
D.	Funds Requested to Date:	$ 0.00
E.	Amount Requested this Payment:	$ 0.00
F.	Reversion Amount *(If Applicable)*:	$ 0.00
G.	Grant Balance:	$ 0.00

H. ☐ GF ☐ GOB ☐ STB *(attach wire if first draw)*
I. ☐ Final Request for Payment *(If Applicable)*

III. Fiscal Year : 2024 (July 1, 2023-June 30, 2024)
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

_____ _____
Grantee Fiscal Officer or **Fiscal Agent** *(If applicable)* | **Grantee Representative**

_____ _____
Printed Name | Printed Name

Date: _____ Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

_____ _____ _____ _____
Division Fiscal Officer | Date | Division Project Manager | Date

September 2014

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Project Manager

FROM: Grantee Entity: _____

Official Representative: _____ _____
Signature

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: $ 0.00

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: Project Manager

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.

New Mexico Environment Department (NMED)
Capital Appropriations Certification Document
Article IX. A. (ii) and (iii)
FA--JEMEZ RD CONSTRUCT - SAP 24-I2457-GF

Payment Request No_____

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

Rev. May 2024		NEW MEXICO ENVIRONMENT DEPARTMENT			
		CONSTRUCTION PROGRAMS BUREAU			
NMED DISBURSEMENT REQUEST					
SPECIAL APPROPRIATIONS PROGRAM (SAP)					
A. NAME OF ENTITY			C. DISBURSEMENT REQUEST NUMBER		
B. PROJECT NUMBER			D. GRANT AMOUNT		

	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees								
Other Professional								
Service Fees								
Inspection Fees								
Property Acquisition								
Construction Cost								
Planning Cost								
Equipment								
Other Costs (specify)								
Contingencies								
TOTAL								

Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.		Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.	

Certification: Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; 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.

Reporting Certification: I hereby certify to the best of my knowledge and belief, that the database reporting is up to date; to include the accuracy of the expenditures and grant balance, project status, project phase, achievements and milestones, and in compliance with Artile VIII of the Capital Outlay Grant Agreement.

Signature of Official Representative:	Typed or Printed Name:	Phone:	Date:
X			

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)
Resolution Number

Whereas, the **Governing Body of the City of Santa Fe** of **Santa Fe** County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as **Project Number SAP 24-I2457-GF**

NOW THEREFORE, BE IT RESOLVED by the named applicant that:

Alan Webber, Mayor or successor is authorized to sign the Grant Agreement for this project, and

Stan Holland, PE Pulic Utilities Engineer and Felicity Fonseca, NCNMEDD, Contracted Fiscal Agent, or successor are the OFFICAL REPRESENTATIVE(S) who are authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Project Description, Request for Payment and to act as the project contact, and

David Chapman, Grant Administrator, or successor is the Capital Projects Monitoring System (CPMS) contact who is designated to update the CPMS database monthly per Article VIII. A. of the Intergovernmental Grant Agreement.

David Chapman, Grant Administrator or successors is the CONTACT who is designated to receive Notice of Obligations (NOO'S).

PASSED, APPROVED, AND ADOPTED: ____

Name, Mayor / Chairperson / Director / Officer, Title, Community / Utility

_____ _____

(Signature) **Date**

(SEAL)

ATTEST:

_____

(Municipal Clerk)

Name of Grantee: City of Santa Fe Project Number: SAP 24-I2457-GF

Current Authorized Signatures (submit with Signature Resolution, update when necessary)

Authorized to Sign Agreement			
Name	Alan Webber	Name	
Title	Mayor	Title	
Signature		Signature	
Address	PO Box 909, Santa Fe, NM	Address	
Email	mayor@santafenm.gov	Email	
Phone	505-955-6590	Phone	
Official Representatives authorized to sign Disbursement Requests and all other documents.			
Name	Stan Holland, PE	Name	Felicity Fonseca
Title	Public Utilities Engineer	Title	NDNMEDD, Contracted Fiscal Agent
Signature		Signature	Felicity Fonseca
Address	73 Paseo Real, Santa Fe NM 87507	Address	3900 Paseo Del Sol, Santa Fe, NM 87507
Email	tsholland@santafenm.gov	Email	felicityf@ncnmedd.com
Phone	505-955-4637	Phone	505-356-9098
Alternate Official Representative, to sign Disbursement Requests and all other documents and act as the Point of Contact.			
Name	P. Fred Heerbrandt	Name	
Title	Engineering Supervisor	Title	
Signature		Signature	
Address	73 Paseo Real, Santa Fe NM 87507	Address	
Email	pfheerbrandt@santafenm.gov	Email	
Phone	505-955-4623	Phone	
Designated Agent or Employee that will make monthly CPMS updates			
Name	David Chapman	Name	
Title	Public Works Grant Administrator	Title	
Signature		Signature	
Address	737 Agua Fria St. Santa Fe NM 87501	Address	
	dachapman@santafenm.gov		
Email	505-955-6251	Email	
Phone		Phone	
Notice of Obligations (NOO's)			
Name	David Chapman	Name	
Title	Public Works Grant Administrator	Title	
Signature	No Signature Required	Signature	No Signature Required
Address	737 Agua Fria St. Santa Fe NM 87501	Address	
Email	dachapman@santafenm.gov	Email	
Phone	505-955-6251	Phone	

ATTACHMENT B
TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY

ARTICLE 1 REVIEW

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project for the creation of a notice of obligation. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.

B. If grant funds are used for construction, a site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.

C. If grant funds are used for construction, the Grantee will submit notice of the award and a copy of the executed construction contract documents.

D. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.

E. All daily construction inspection reports shall be made available to the NMED upon request.

F. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

ARTICLE 2 NMED OVERSIGHT

NMED oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 CLOSEOUT

A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.

B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.

C. If the grant funds are used for construction, final payment will be made after the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

i. A certificate of substantial completion including punch list items.

ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.

iii. A written consent of the surety, if any, to final payment.

iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.

v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.

vi. Certification letter of project acceptance by the Grantee and the Grantee’s project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.

vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

ALTERNATIVE FISCAL AGENT
ATTACHMENT FA

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this ____day of _____, 20__, by and between the New Mexico Environment Department, hereinafter called the "Department", and Santa Fe, City of, hereinafter called the "Grantee", by the North Central NM Economic Development District, authorized agent, hereinafter called "Fiscal Agent."
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 (20), Subsection (103), 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, the Grantee contracted with the Fiscal Agent for capital outlay fiscal agency services as set forth in Memorandum of Understanding, and

WHEREAS, the Grantee requests the Fiscal Agent act as the authorized agent for capital outlay projects awarded by the New Mexico legislature and administered by the Department.

WHEREAS, the Department recognizes, and will contract with the Grantee through its authorized agent, and

WHEREAS, the Department: successor agency, may enter into grants and contracts as appropriated by law.

MEMORANDUM OF UNDERSTANDING
BETWEEN
Santa Fe, City of (Grantee)

AND
North Central NM Economic Development District (Fiscal Agent)

This Memorandum of Understanding (MOU) confirms that the Grantee is working with the Fiscal Agent for the administration of a New Mexico legislative special appropriation to the New Mexico Environment Department (NMED).

In accordance with the terms of the NMED Grant Agreement (Article X, B., (v)), the governing board of the Grantee will adopt a resolution "authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment." The resolution will also authorize the Fiscal Agent and a Fiscal Agent signatory authority.

The special appropriation grant agreement is:
SAP 24-I2457-GF, in the amount of Two Hundred Ten Thousand Dollars ($210,000.00), expiring 6/30/2028 and has been appropriated "to plan, design and construct improvements on Jemez road, including a sewer line south of Airport road, to improve residential septic systems in Santa Fe in Santa Fe county;"

It is mutually agreed that the Grantee will determine the specific work to be completed, will oversee construction, and will own and operate the improvements resulting from completion of the Project. By this MOU, it is understood between the parties that the Fiscal Agent is authorized to act for the Project, and will be responsible for administration, procurement, and payments related to the project.

The Fiscal Agent shall not be compensated from any grant funds for services rendered, or credited for services rendered, during the term of this MOU or during the duration of the Project.

This MOU shall be in effect for the duration of the grant agreement and terminates if the Grantee designates a new Fiscal Agent, or when the grant agreement expires or the project is complete and all close out documents are received, whichever comes first. The parties affirm their understanding and agreement by their signatures below. The parties may enter into a contractual agreement related to this project, but the terms of the agreement shall not conflict with the terms of this MOU or the Resolution.

IN WITNESS WHEREOF, the parties have duly executed this MOU as of the date of execution by the Fiscal Agent.

GRANTEE:

_____

Signature of Official with Authority to Bind Grantee

By:_____

(Type or Print Name)

Its:_____

(Type or Print Title)

_____

Date

FISCAL AGENT:

Monica Abeita

Signature of Official with Authority to Bind Fiscal Agent

Monica Abeita

By:_____

(Type or Print Name)

Executive Director

Its:_____

(Type or Print Title)

February 13, 2025

Date

Revised 4-20-18

IN WITNESS WHEREOF, the City of Santa Fe has agreed to this Appropriation Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

_____

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

_____

ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jan 15, 2025 15:41 MST)

ASSISTANT CITY ATTORNEY

FINANCE:

_____

EMILY OSTER, FINANCE DIRECTOR

Amendment A - SAP 24-I2457-GF Jemez Road Sewer ($210,000) Authorized Representatives and Agents

Final Audit Report 2025-03-17

Created:	2025-03-17
By:	PALMER ANDERSON (pcanderson@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAMeQyiykDH10gQmnIhs_U_ISmeJvOCb1

"Amendment A - SAP 24-I2457-GF Jemez Road Sewer ($210,000) Authorized Representatives and Agents" History

Document created by PALMER ANDERSON (pcanderson@santafenm.gov)
2025-03-17 - 9:15:37 PM GMT- IP address: 63.232.20.2

Document emailed to Erin McSherry (ekmcsherry@santafenm.gov) for signature
2025-03-17 - 9:17:22 PM GMT

Email viewed by Erin McSherry (ekmcsherry@santafenm.gov)
2025-03-17 - 9:17:51 PM GMT- IP address: 104.47.65.254

Document e-signed by Erin McSherry (ekmcsherry@santafenm.gov)
Signature Date: 2025-03-17 - 9:19:22 PM GMT - Time Source: server- IP address: 63.232.20.2

Document emailed to acchavez@santafenm.gov for signature
2025-03-17 - 9:19:25 PM GMT

Email viewed by acchavez@santafenm.gov
2025-03-17 - 9:22:37 PM GMT- IP address: 174.201.225.66

Signer acchavez@santafenm.gov entered name at signing as Amanda Chavez
2025-03-17 - 9:23:01 PM GMT- IP address: 174.201.225.66

Document e-signed by Amanda Chavez (acchavez@santafenm.gov)
Signature Date: 2025-03-17 - 9:23:03 PM GMT - Time Source: server- IP address: 174.201.225.66

Agreement completed.
2025-03-17 - 9:23:03 PM GMT

Powered by Adobe Acrobat Sign

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2025-__

INTRODUCED BY:

Councilor Amanda Chavez

AMENDMENT A – RED - CHAVEZ

A RESOLUTION

AUTHORIZING REPRESENTATIVES AND AGENTS FOR AN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT, REGARDING AGREEMENT NUMBER SAP 24-I2457-GF, TO PLAN, DESIGN, AND CONSTRUCT IMPROVEMENTS ON JEMEZ ROAD, INCLUDING A SEWER LINE SOUTH OF AIRPORT ROAD, TO IMPROVE RESIDENTIAL SEPTIC SYSTEMS.

WHEREAS, in the Laws of 2024, Chapter 66, Section 20, Subsection 103, the New Mexico Legislature made an appropriation to the New Mexico Environment Department ("NMED"), for funds from which NMED is making available to the City of Santa Fe ("Grantee" OR "City") through NMED Agreement Number SAP 24-I2457-GF ("Agreement"), incorporated as Attachment A, in the amount of two hundred and ten thousand ($210,000), to plan, design, and construct improvements on Jemez Road, including a sewer line south of Airport Road to improve residential septic systems in the City of Santa Fe in Santa Fe County; and

WHEREAS, Article X. B. (v) of the Agreement, states that "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", and adopting this resolution will satisfy this requirement; and

WHEREAS, in a letter dated August 24, 2023, the New Mexico Department of Finance and Administration ("DFA") took the position that it required the City to initiate a fiscal agent relationship in order for the City to utilize its current State Capital appropriations, and DFA renewed this position in a letter dated August 20, 2024, for all current Capital outlay appropriations; and

WHEREAS, as a result of the DFA's position, the City entered into a governmental services agreement, incorporated as Attachment B, with North Central Economic Development District ("NCEDD") for fiscal agent services, in which NCEDD agreed to review and sign Requests for Payment for permissible expenditures, on December 19, 2023; and

WHEREAS, the terms of Amendment No. 3 to the Intergovernmental Service Agreement, Appropriation ID No. I2457, included as part of Attachment B, includes the project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that the following provisions shall apply to the Agreement:

A. The person listed below, or their successor, is the Grantee's official representative and is authorized to sign the Agreement:

Grantee:	City of Santa Fe
Name:	Alan Webber
Title:	Mayor
Address:	PO Box 909
	Santa Fe, NM 87504-0909
Email:	mayor@santafenm.gov
Telephone:	(505) 955-6590

B. The people listed below, or their successors, are the Grantee's Fiscal Agent and

the Official Representative, who are authorized, respectively, to sign Request for Payment (Fiscal Agent) and to act as the project contact and sign all other documents necessary to fulfill the Grant Agreement and the Requirements (Public Works Director):

Grantee:	City of Santa Fe
Name:	Felicity Fonseca;
Title:	Community Development Director, North Central New Mexico Economic Development District, Contracted Fiscal Agent;
Address:	644 Don Gaspar Ave. Santa Fe, Nm 87505
Email:	felicityf@ncnmedd.com
Telephone:	(505) 356-9098
Name:	[~~Regina Wheeler~~] Stan Holland
Title:	[~~Public Works Director~~] PE Public Utilities Engineer
Address:	[~~737 Agua Fria St.~~ ~~Santa Fe, Nm 87501~~] 73 Paseo Real Santa Fe, NM, 87508
Email:	[~~rawheeler@santafenm.gov~~] tsholland@santafenm.gov
Telephone:	[~~(505) 955-6622~~] (505) 955-4637

C. The person listed below, or their successor, is the Capital Projects Monitoring System (CPMS) contact who is designated to update the CPMS database monthly per Article VIII. A. of the Intergovernmental Grant Agreement:

Grantee:	City of Santa Fe

Name: David Chapman

Title: Grant Administrator

Address: P.O. Box 909

Santa Fe, NM, 87504

Email: dachapman@santafenm.gov

Telephone: (505) 955-6251

D. The person listed below, or their successor, is the contact who is designated to receive Notice of Obligations (NOOs):

Grantee: City of Santa Fe

Name: ~~Jesse Roach~~ David Chapman

Title: ~~Interim Utilities Director~~ Grant Administrator

Address: ~~801 W. San Mateo~~

~~Santa Fe, NM, 87504~~

P.O. Box 909

Santa Fe, NM, 87504

Email: [~~jdroach@santafenm.gov~~] dachapman@santafenm.gov

Telephone: [~~(505) 955-4309.~~] (505) 955-6251

BE IT FURTHER RESOLVED, the Resolution Form included on page 18 of 21 in Attachment A, SAP 24-I2457-GF is the form used for this Resolution.

PASSED, APPROVED, and ADOPTED this _____day of _____, 2025.

_____

ALAN WEBBER, MAYOR

ATTEST:

_____

ANDRÉA SALAZAR, CITY CLERK

APPROVED AS TO FORM:

_____

ERIN K. McSHERRY, CITY ATTORNEY