



# City of Santa Fe, New Mexico

## memo

**DATE:** August 12, 2015

**TO:** Public Works Committee

**VIA:**

*Isaac J. Pino*

Isaac J. Pino, PE – Public Works Department Director

John Romero, PE – Acting Roadway & Trails Engineering Division Director *JR*

Leroy Pacheco, PE – River, Watershed & Trails Section Manager *LP*

**FROM:** Melissa A. McDonald, River and Watershed Coordinator

### **ITEM & ISSUE:**

REQUEST FOR APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH THE SANTA FE WATERSHED ASSOCIATION PURSUANT TO RESOLUTION NO. 2001-67 TO MANAGE THE CITY'S ADOPT-THE-RIVER PROGRAM IN THE AMOUNT OF \$20,000 INCLUDING NMGR T PER FY FOR 4 YR, FOR A TOTAL OF \$80,000 INCLUDING NMGR T

### **BACKGROUND & SUMMARY:**

On October 10, 2001, the Governing Body approved Resolution No. 2001-67 which provides that the Santa Fe Watershed Association (SFWA) shall administer the City's Adopt-the-River program. Pursuant to the Resolution, the City seeks to enter into a "sole source" Professional Services Agreement to continue the program and compensate SFWA for management of the program. Under the scope of services for the program, the SFWA provides valuable services that include:

- Recruiting and coordinating volunteers for river and tributary arroyo clean-up and other stewardship activities;
- Educating the public regarding the function of the Santa Fe River, riparian watershed restoration activities, and storm water management; and

The current agreement between the City of Santa Fe and the Santa Fe Watershed Association was first executed in 2009. Following a series of annual amendments, the current agreement is set to terminate on September 30, 2015. The City's Purchasing office has advised the Public Works Department that the current agreement is no longer eligible for amendments to extend the term. For this reason, the Public Works Department seeks to initiate a new Professional Services Agreement for a four year term.

**Funds are budgeted and available for these services in Business Unit: 22401, Line Item: 510340.**

### **RECOMMENDED ACTION:**

The Public Works Department recommends the following: Approval of a Professional Services Agreement with Santa Fe Watershed Association to manage the City's Adopt-the-River Program in the amount \$20,000.00 inclusive of New Mexico Gross Receipts Tax.

Attachments: Professional Services Agreement  
Copy of Resolution No. 2001-67  
Summary of Contracts  
Sole Source Form

## **Adopt-the-River Program**

### **CITY OF SANTA FE**

#### **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and the Santa Fe Watershed Association (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

#### **1. SCOPE OF SERVICES**

A. The Contractor shall provide the services for the City with regard to the Adopt-the -River Program (the "Project"), in conjunction with EXHIBIT "A", attached hereto and made a part thereof.

B. The City shall issue to the Contractor a written authorization to proceed for each project assignment or task. If the times for completion of any project assignment or task are exceeded for reasons beyond the control of the Contractor, then the parties may agree to amend the schedule to extend the time within which Contractor shall complete the project or phase thereof.

#### **2. STANDARD OF PERFORMANCE; LICENSES**

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

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

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered a sum not to exceed Twenty Thousand Dollars (\$20,000.00) per fiscal year, inclusive of applicable gross receipts taxes for a total of Eighty Thousand Dollars (\$80,000) for the term of this agreement

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed on a monthly pro-rated basis. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on September 30, 2019 , which is four years hence from the date of signature, unless terminated sooner pursuant to Article 6 below. The term and effective date is amendable by the mutual agreement of both parties pursuant to Article 18 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 10 days written

notice to the Contractor.

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

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. 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.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. 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.

9. CONFLICT OF INTEREST

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

10. ASSIGNMENT; SUBCONTRACTING

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

11. RELEASE

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

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City will be notified within 10 days of cancellation for any reason. The Contractor shall furnish the City with a copy of a "Certificate of Insurance" as a condition prior to performing services under this Agreement.

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

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

13. INDEMNIFICATION

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

claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. 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.

15. THIRD PARTY BENEFICIARIES

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

16. RECORDS AND AUDIT

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

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and



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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any

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

22. NOTICES

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

City of Santa Fe

Contractor:

Acting Roadway & Trails Engineering Division Director  
Attn: John J. Romero, PE  
P.O. Box 909  
Santa Fe, New Mexico 87504-0909

Santa Fe Watershed Association  
Andy Otto, Executive Director  
1413 Second Street, Ste. 3  
Santa Fe, NM 87505

23. EXHIBITS

The following Exhibits are attached to and made a part of this agreement:

Exhibit A – Scope of Work

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

CITY OF SANTA FE:

CONTRACTOR:

Santa Fe Watershed Association

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

\_\_\_\_\_  
Andy Otto, Executive Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

NM Taxation & Revenue  
CRS # 02-442369-00-6  
City of Santa Fe Business  
Registration#14-00094214

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO ~~FORM~~:

   
\_\_\_\_\_  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
OSCAR S. RODRIGUEZ, FINANCE DIRECTOR

22401/510340  
Business Unit/Line Item

## **Exhibit A Scope of Services**

### **The Contractor shall provide the following services for the City:**

A. Manage the ~~Adopt the River~~ Program (the "Program") to bring community investment, through both financial contributions and citizen volunteer efforts, toward restoring and maintaining the Santa Fe River, within the City limits, Management of the Program will entail: Develop plans for restoring and maintaining twenty- six (26) reaches of the Santa Fe River & tributary arroyos that are adopted by one or more participating businesses, individuals or community groups.

- 1) Develop plans for restoring and maintaining the Santa Fe River and its tributary arroyos. Establish a sponsorship and citizen-volunteer stewardship program for clean-up and improvement projects.
- 2) Research, and make application to, prospective third-party funding sources to help fund development of ecological projects that improve the Santa Fe River Corridor within the Santa Fe City limits.
- 3) Recruit, organize, and manage participating businesses, community organizations, and community members to serve as river and arroyo stewards (volunteers who provide trash removal, vegetation management, advocacy, etc.) and river and arroyo sponsors (monetary sponsors).
- 4) Organize and support regular (weekly, monthly, or bi-monthly) trash removal, vegetation management and assessment days for the river and arroyo reaches. Trash and vegetation will be placed in areas designated by the City and removed by the City.
- 5) The Contractor will notify the City five days in advance of changes to steward schedules. Any request for pesticide application, such as herbicide treatment for invasive species, shall be submitted through the Parks Division Director's office at least two weeks in advance by a written request describing the project involving pesticide.

- 6) Post and maintain one hanging sign on each of the twenty six (26) reaches from Armijo Park to Frenchy's Field, promoting the Adopt-the-River Program and highlighting the City, SFWA, Sponsor and Steward. Signs will be created, placed and maintained by SFWA. Any new or replacement poles will be installed by the City.
- 7) Provide training and education of volunteers in watershed issues such as river restoration, water conservation, storm water management, riparian vegetation, hazardous waste handling, and awareness of homeless issues.
- 8) Organize, publicize and coordinate three river-wide community all river clean-up events: Hunt for Red Rocktober in October, Love Your River Day in February, and National River Clean-up in May/June.
- 9) Coordinate with City staff to ensure all actions taken in the Program comply with applicable City plans, policies and procedures.
- 10) Provide monthly reports to the river and watershed coordinator regarding work done the previous month.
- 11) Conduct public outreach to promote the Program and the Santa Fe River Voluntary Conservation Fund (also known as the SF River Fund). This will include presentations at neighborhood meetings and community events, articles and advertisements in various media sources (print, on- line, radio) and pages on the Contractor's website describing the programs and highlighting program activities.

B. Coordination with City of Santa Fe Staff

1. Upon selection of the Contractor an initial meeting will be held with the City and Contractor to establish agreements for effective coordination between the two parties.
2. Regular meetings will be scheduled for coordination, to review progress and upcoming, planned activities, and to make any timely modifications to work plans.

3. City departments, divisions and programs that the Contractor may be asked to work with include the Public Works Dept., the Parks Division, Streets and Drainage, Storm Water Management, Constituent Services
5. City staff will review work plans and design documents. If extensive technical review is required, the City may back-charge the contractor for review services.

C. Reporting Requirements

1. Contractor shall prepare a summary, monthly progress report that shall include the periodic invoice, employee work hour reports, summaries of work performed. Submittal of digital photos of work in progress and completed, while not required, are also desirable.

D. Applications for Payment

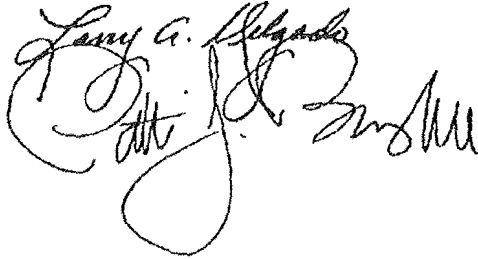
Applications for Payment shall include:

1. An invoice;
2. Employee/Volunteer work hour reports for the time period being invoiced;
3. Copies of any activity logs documenting the nature and locations of the work performed; plus other information including number of Contractor's employees/volunteers, dates and hours worked, city staff involved.

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2001- 67

INTRODUCED BY:



A RESOLUTION

TO CREATE THE ADOPT-THE-RIVER PROGRAM.

WHEREAS, the City of Santa Fe is located along and has grown to its present state in large part due to its geographical situation along the Santa Fe River; and

WHEREAS, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> century reports on the City remark on the clear trout stream that flowed through the town; and

WHEREAS, the Hydrographic Survey of 1914 listed 38 acequias diverting from the Santa Fe River to irrigate 1,267 acres of farmland; and

WHEREAS, well into the 20<sup>th</sup> century citizens of Santa Fe swam in, fished in and skated on the river; and

WHEREAS, in 1995 a group of citizens, with City support, drew up a River Corridor Master Plan to reverse the degradation of the river, restore its flow and its streamside vegetation, and create a trail along its length to reintroduce the people of Santa Fe to their river; and

WHEREAS, this plan was adopted as City policy by Resolution 1996-11 which was adopted by unanimous vote of the Governing Body; and

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## City of Santa Fe Summary of Contracts, Agreements, & Amendments

### Section to be completed by department for each contract or contract amendment

- |                                 |                          |                             |     |                                     |
|---------------------------------|--------------------------|-----------------------------|-----|-------------------------------------|
| 1 <b>FOR:</b> ORIGINAL CONTRACT | <input type="checkbox"/> | CONTRACT AGREEMENT          | PSA | <input checked="" type="checkbox"/> |
| MAINTENANCE AGREEMENT           | <input type="checkbox"/> | LICENSE AGREEMENT           |     | <input type="checkbox"/>            |
| LEGAL SERVICES AGREEMENT        | <input type="checkbox"/> | MEMORANDUM OF UNDERSTANDING |     | <input type="checkbox"/>            |
| MEMORANDUM OF AGREEMENT         | <input type="checkbox"/> | JOINT POWERS AGREEMENTS     |     | <input type="checkbox"/>            |
| GRANT AGREEMENTS                | <input type="checkbox"/> | CHANGE ORDERS               |     | <input type="checkbox"/>            |

2 Name of Contractor Santa Fe Watershed Association

- 3 Complete information requested ☐ Plus GRT
- ☒ Inclusive of GRT

Original Contract Amount: \$20,000 for 4 years (\$80,000 total)

Termination Date: September 30, 2019

- ☒ Approved by Council Date: \_\_\_\_\_
- ☐ or by City Manager Date: \_\_\_\_\_

**Contract is for:** Contract for Adopt-the-River program

Amendment # \_\_\_\_\_ to the Original Contract# \_\_\_\_\_

Increase/(Decrease) Amount \$ \_\_\_\_\_

Extend Termination Date to: \_\_\_\_\_

- ☐ Approved by Council Date: \_\_\_\_\_
- ☐ or by City Manager Date: \_\_\_\_\_

**Amendment is for:** \_\_\_\_\_

- 4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT
- ☐ Inclusive of GRT

Amount \$ \_\_\_\_\_ of original Contract# \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Total of Original Contract plus all amendments: \$ \_\_\_\_\_



## City of Santa Fe Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP ☐ RFQ ☐ Sole Source ☒ Other ☐

6 **Procurement History:** Seeking approval of first of 4 year contract

7 **Funding Source:** Water Division **BU/Line Item:** 22401 / 510340

8 **Any out-of-the ordinary or unusual issues or concerns:**  
See attached memo for details

9 **Staff Contact who completed this form:** Melissa A. McDonald Phone # 955-6840

**Division Contract Administrator:** Becky Casper *PC*

**Division Director:** John Romero, PE *JR*

**Department Director:** Isaac J. Pino, PE *Isaac J. Pino*

10 **Certificate of Insurance attached.** (if original Contract) ☒

11 **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** Annual review with SFWA was done to identify effectiveness of contract. Grant opportunities and third party funding were discussed.

12 **Prior year's contract amount?:** #

13 **Describe service impact from an ongoing commitment to the contractor:** The contractor has developed good relationships with other agencies where overlap exists such as with SF County.

14 **Why staff cannot perform the work?:** Sole source directive from governing body to work with non-profit

15 **If extending contract, why?:** Quality of work and to avoid lapse in services

16 **Was a Santa Fe company awarded contract? If not, why?:** Yes

17 **Has the contract has been approved as to form by City Attorney's Office?:** Yes

18 **Is this for City Manager or Council approval?:** Council Approval

**To be recorded by City Clerk:**

Contract # \_\_\_\_\_

Date of contract Executed (i.e., signed by all parties): \_\_\_\_\_

## SOLE SOURCE REQUEST AND DETERMINATION FORM

This form must be forwarded to the Purchasing Officer for the City of Santa Fe Purchasing Office for processing.

**Date:** 7/15/15

**Prepared By:** Melissa McDonald

**Title:** River & Watershed Coordinator

**Vendor Name:** Santa Fe Watershed Association

**Address:** 1413 Second Street, Suite 3

**City:** Santa Fe

**State:** NM

**Zip Code:** 87505

**Description of Good/Service to be procured:** Management of the Adopt-the-River and Adopt-a-Arroyo program.

**Estimated Cost:** \$20,000

**Term of Contract:** 10/01/15 – 9/30/16

1. **Explain why this is the only available source that can meet the needs of your department.**

The Governing Body approved Resolution No. 2001-67 which provides that the Santa Fe Watershed Association (SFWA) shall administer the City's Adopt-the-River program. Pursuant to the Resolution, the City seeks to enter into a "sole source" Professional Services Agreement to continue the program and compensate SFWA for management of the program.

2. Explain why this vendor is the only available source from which to obtain this product of service

☐

The company has affirmed (memo from vendor is attached) that there is no other source for this item. Our search for possible vendors proved unsuccessful; or

☒

Other reason, please explain in full. Attach additional sheets, if necessary.

Santa Fe Watershed Association currently manages of the Adopt-the-River and the Adopt-an-Arroyo programs since 2001. They coordinate, advertise, and manage sponsorship of 26 adopted reaches of the river. They also provide education, outreach and advocacy regarding the river and watershed ecology and hydrology. They are under contract with Santa Fe County for Adopt- an-River program therefore the management will be streamlined.

3. Explain why the price is considered fair and reasonable.

Hours and wages are on par with this type of work and meet current state, local, and municipal standards including the Living Wage Ordinance.

4. Describe the efforts made to obtain the best possible price from this sole source vendor for the taxpayers. What (if any) is the total cost savings from the original quote? (Attach additional sheets, if necessary.)

Annual review of the PSA was done with the SFWA determining the exact scope of work and area of coverage. Discussion of current and future grant opportunities were discussed to maximize the city's monies in the future.

**Approvals:**

Based on the above facts, the Purchasing Office has made the determination that the justification for the Sole Source procurement is in accordance with Section 13-1-126, NMSA 1978 and will be posted for a 30-day period prior to award.

  
Robert Rodarte  
Purchasing Officer

7/16/15  
Date

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

*for* Shirley Rodriguez 08/17/15  
Robert Rodarte Date  
Purchasing Director  
City of Santa Fe

**Required Attachments:**

- \*Letter from Contractor, if applicable
- \*Agenda Item to be presented to City Council if over \$50,000 for Professional Services and \$50,000 for Goods and Non-Professional Services