

**City of Santa Fe**

**Invitation to Bid**

**Vegetation Management, Irrigation Installation and Repair, Landscaping Construction and Installation, Landscape and Irrigation design, Snow Plowing/Shoveling and Ice Control, and Encampment Clean-up On-call Services**

**ITB # 23/27/B**

**NIGP Commodity Code: 90654, 90656, 91227, 96872, 96888, 98808, 98856, 98863, 98836, 98887, 98888, 98889**

**Bid Due Date and Time: January 5, 2023 @ 2:00pm MST**

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

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
dba (if applicable): \_\_\_\_\_  
Co. Email: \_\_\_\_\_  
Co. Phone No.: \_\_\_\_\_  
NM Gross Receipts Tax # (CRS) \_\_\_\_\_ Federal Tax ID # \_\_\_\_\_

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

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

Contractor's Delivery: \_\_\_\_\_ (May be considered in the award)

Authorized Signature: \_\_\_\_\_ Print or type name: \_\_\_\_\_  
Signatory Email: \_\_\_\_\_ Phone No: \_\_\_\_\_

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

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

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

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

## **Terms and Conditions**

(Unless otherwise specified)

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

written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

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

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

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

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

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

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

### Important Bidding Information

**Submission of Bid:** Due Date – January 5, 2023 at 2:00 P.M. (MST/MDT) at which time the sealed Bids will be recorded as received and opened.

Join Zoom Meeting

<https://santafenm-gov.zoom.us/j/89509516666?pwd=MWNxTk1EVW1GNTNacktPSkZDalZJUT09>

Meeting ID: 895 0951 6666

Passcode: 771228

One tap mobile

+13462487799,,89509516666#,,,\*771228# US (Houston)

+16694449171,,89509516666#,,,\*771228# US

Dial by your location

+1 346 248 7799 US (Houston)

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 719 359 4580 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 646 931 3860 US

+1 689 278 1000 US

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

Meeting ID: 895 0951 6666

Passcode: 771228

Find your local number: <https://santafenm-gov.zoom.us/j/89509516666?pwd=MWNxTk1EVW1GNTNacktPSkZDalZJUT09>

The Bid is to be delivered to:

*Submissions of all Invitation to Bids must be accomplished via email to: [purchasing@nmsantafern.gov](mailto:purchasing@nmsantafern.gov).*

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

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

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

CPO Designee contact information is:

R. Scott Gunter

Email: [rsgunter@santafenm.gov](mailto:rsgunter@santafenm.gov)

505-469-8949

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

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

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

☐ No financial interest      ☐ Yes financial interest

If yes specify by name: \_\_\_\_\_

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

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

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

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

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

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

## Awards

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

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

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

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

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

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

### **Specifications:**

The City of Santa Fe (The City) is seeking bids for On-Call Services to include, Vegetation Management, Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control.

This will be awarded for (4) years.

Multiple awards will be issued as a result of this ITB.

The *use of subcontractors is allowed* with their company information to be included with bid submittals. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from issuing the issuing Department before any subcontractor is used during the term of this agreement. Any contractual agreement that may result from this ITB shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the Department which may derive from this ITB. The Department entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **Orders:**

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

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

Only written signed orders are valid.

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

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

### **Shipping and Billing Instructions**

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



**Insurance:**

The Contractor shall provide all insurance necessary for its employees on the project, including, but not limited to, Workman's Compensation Insurance. The Contractor agrees to comply with City and state laws and rules pertaining to Worker's Compensation Insurance coverage for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules, when required to do so, this Price Agreement will be cancelled immediately.

It is specifically agreed between the parties executing this Price Agreement that it is not intended by any of the provisions of any part of the Price Agreement to create the public or any member hereof a third party beneficiary or to authorize anyone not a party to the Price Agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to properties and/or other claims whatsoever pursuant to the provisions of this Price Agreement.

**Wage Rates:**

All work covered by this Invitation to Bid 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 requesting Department 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 requesting Department may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

**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 bid on a contract shall be submitted unless the Contractor has a valid Contractor's license issued by the CID to bid and to perform the type of work to be undertaken, as set forth in §60-13-12, NMSA 1978.

Safety shall be of main concern 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 requesting Department 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 requesting Department in connection with the performance of the work covered by this price Agreement.

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 Price Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnosis problems and to make the appropriate decisions needed to provide these services.

**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 requesting Department. Preventative measure shall be taken by both the contractor and the requesting Department prior to issuing the Notice to Proceed. Such measures may include soil tests (soil boring); 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.

**Warranty:**

The Contractor shall warrant its work for materials and for workmanship furnished and performed under this Price Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion.

**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 requesting Department for which the work was provided.

The City of Santa Fe 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 requesting Department's approval.

**Bonding:**

A one hundred percent (100%) performance bond and a one hundred percent (100%) payment and material bond executed by a surety company authorized to do business in the State of New Mexico will be required of the Contractor prior to each project over twenty-five thousand dollars (\$25,000). Said bonds must be provided to the requesting Department. Failure to comply shall result in the order being issued to another vendor and the difference in the cost being charged back to the awarded Contractor.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

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.

Hourly rates are requested for the three (3) levels of personnel.

**Superintendent:** a person with supervisory experience who maintains control of the work and work site. This person may or may not actually perform work on the project.

**Journeyman or Experienced Worker:** a person licensed by the State for work required and being performed or a person with many years of experience with a high rate of pay.

**Laborer:** a person with minimal experience, performing minor forms of labor.

Bidder must enter unit pricing per for the line items in the tables below. If needed, any and all licenses or certifications must accompany the line items that is being bid, per City of Santa Fe, State of New Mexico and or Federal requirements. At any time, The City may request to see any and all required licenses needed for any scope of work (SOW). If the work listed under the Article and Description cannot be performed or is not desirable by a company, please mark as N/A. If bidder responds with a N/A they will not be eligible to perform the corresponding line item. Bidder does not need to respond to all items in order to be considered. Awarded contractors may be required to submit a quote for the SOW based on the bid unit price. This quote for the stated SOW must be approved by the City before any work commences. Hourly rates charges will not begin until Contractor is on site.



## Vegetation Management

### Price Schedule:

| Item | Approx. QTY | Unit | Article and Description   | Unit Price |
|------|-------------|------|---|------------|
|      |             |      | <i>Items 1-13 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)</i>                |            |
| 1    | 1           | HR.  | BRUSH REMOVAL- HOURLY RATE  | \$         |
| 2    | 1           | HR.  | CLEAR AND GRUBBING- HOURLY RATE   | \$         |
| 3    | 1           | HR.  | PRUNING HERBACEOUS PLANTS - HOURLY RATE   | \$         |
| 4    | 1           | HR.  | PRUNING WOODY PLANTS - HOURLY RATE  | \$         |
| 5    | 1           | HR.  | MOWING W/ STRING LINE EDGING - HOURLY RATE  | \$         |
| 6    | 1           | HR.  | WEED EATING – HOURLY RATE   | \$         |
| 7    | 1           | HR.  | MECHANICAL STUMP GRINDING - HOURLY RATE   | \$         |
| 8    | 1           | HR.  | CHIPPING - HOURLY RATE  | \$         |
| 9    | 1           | HR.  | FERTILIZATION - HOURLY RATE   | \$         |
| 10   | 1           | HR.  | TURF AERATION- HOURLY RATE  | \$         |
| 11   | 1           | HR.  | SPRAYING (INTEGRATED PEST MANAGER APPROVED) - HOURLY RATE *<br>License/Certification Needed                             | \$         |
| 12   | 1           | HR.  | DIAGNOSIS, PROJECT ESTIMATES AND TROUBLESHOOTING- HOURLY RATE   | \$         |
| 13   | 1           | HR.  | BASEBALL/SOFTBALL FIELD STANDARD INFIELD DRAG/RAKE OUT  | \$         |
|      |             |      | <i>Items 14-23 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.) (CAL) Caliper</i> |            |
| 14   | 1           | EA.  | TREE REMOVAL- 0-3" CAL  | \$         |

| Item | Approx. QTY | Unit    | Article and Description   | Unit Price |
|------|-------------|---------|---|------------|
| 15   | 1           | EA.     | TREE REMOVAL- 4-7" CAL  | \$         |
| 16   | 1           | EA.     | TREE REMOVAL- 8-9" CAL  | \$         |
| 17   | 1           | EA.     | TREE REMOVAL- 10-12" CAL  | \$         |
| 18   | 1           | EA.     | TREE REMOVAL- 13-14" CAL  | \$         |
| 19   | 1           | EA.     | TREE REMOVAL- 17-24" CAL  | \$         |
| 20   | 1           | EA.     | TREE REMOVAL- 25-30" CAL  |            |
| 21   | 1           | EA.     | TREE REMOVAL- 31-36" CAL  | \$         |
| 22   | 1           | EA.     | TREE REMOVAL- 37-42" CAL  | \$         |
| 23   | 1           | EA.     | TREE REMOVAL- 43-48" CAL  | \$         |
|      |             |         | <i>Items 24-26 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.</i>  |            |
| 24   | 1           | SF      | RE-VEGETATION SEEDING-BY HAND   | \$         |
| 25   | 1           | SF      | RE-VEGETATION SEEDING-HYDROSEED   | \$         |
| 26   | 1           | 1000 SF | ESTABLISHMENT WATERING-FOR NEW SEEDING  | \$         |
|      |             |         |   |            |
| 27   | 1           | TON     | GREEN WASTE TIPPING FEE   | \$         |
| 28   | 1           | TON     | GENERAL WASTE TIPPING FEE   | \$         |
|      |             |         |   |            |
| 29   | 1           | 1 WEEK  | PORT-A-POTTY RENTAL   | \$         |
| 30   | 1           | %       | % Discount off for Items (1-29) all parts and materials. Invoice will include copies of all purchases for parts and materials, including contractor and date purchased. Enter zero if no discount is offered. | %          |

## Wage Rates for Landscape and Irrigation Design Projects

### Price Schedule:

| Item | Approx.<br>QTY | Unit | Article and Description   | Unit Price |
|------|----------------|------|---|------------|
|      |                |      | <i>Items 31-32 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)</i> |            |
| 31   | 1              | HR.  | LANDSCAPE DESIGN - HOURLY RATE  | \$         |
| 32   | 1              | HR.  | IRRIGATION DESIGN - HOURLY RATE   | \$         |

## Wage Rates for Landscape Construction Projects

### Price Schedule:

| UNDER \$60,000 |             |      |   |            |
|----------------|-------------|------|---|------------|
| Item           | Approx. QTY | Unit | Article and Description   | Unit Price |
|                |             |      | <i>Items 33-38 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)</i> |            |
| 33             | 1           | HR.  | SUPERINTENDENT- REGULAR HOURLY RATE   | \$         |
| 34             | 1           | HR.  | SUPERINTENDENT- OVERTIME HOURLY RATE  | \$         |
| 35             | 1           | HR.  | JOURNEYMAN OR EXPERIENCED WORKER- REGULAR HOURLY RATE   | \$         |
| 36             | 1           | HR.  | JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME HOURLY RATE  | \$         |
| 37             | 1           | HR.  | LABORER- REGULAR HOURLY RATE  | \$         |
| 38             | 1           | HR.  | LABORER- OVERTIME HOURLY RATE   | \$         |
| OVER \$60,000  |             |      |   |            |
|                |             |      | <i>Items 39-44 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)</i> |            |
| 39             | 1           | HR.  | SUPERINTENDENT- REGULAR HOURLY RATE   | \$         |
| 40             | 1           | HR.  | SUPERINTENDENT- OVERTIME HOURLY RATE  | \$         |
| 41             | 1           | HR.  | JOURNEYMAN OR EXPERIENCED WORKER- REGULAR HOURLY RATE   | \$         |
| 42             | 1           | HR.  | JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME HOURLY RATE  | \$         |
| 43             | 1           | HR.  | LABORER- REGULAR HOURLY RATE  | \$         |
| 44             | 1           | HR.  | LABORER- OVERTIME HOURLY RATE   | \$         |

# **Irrigation Install/Repair**

## **Price Schedule:**

| <b>UNDER \$60,000</b> |                    |             |   |                   |
|-----------------------|--------------------|-------------|---|-------------------|
| <b>Item</b>           | <b>Approx. QTY</b> | <b>Unit</b> | <b>Article and Description</b>  | <b>Unit Price</b> |
|                       |                    |             | <i>Items 45-50 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)</i>   |                   |
| 45                    | 1                  | HR.         | SUPERINTENDENT- REGULAR HOURLY RATE   | \$                |
| 46                    | 1                  | HR.         | SUPERINTENDENT- OVERTIME HOURLY RATE  | \$                |
| 47                    | 1                  | HR.         | JOURNEYMAN OR EXPERIENCED WORKER- REGULAR HOURLY RATE   | \$                |
| 48                    | 1                  | HR.         | JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME HOURLY RATE  | \$                |
| 49                    | 1                  | HR.         | LABORER- REGULAR HOURLY RATE  | \$                |
| 50                    | 1                  | HR.         | LABORER- OVERTIME HOURLY RATE   | \$                |
| 51                    | 1                  | %           | % Discount off for Items (45-50) of all parts and materials. Invoice will include copies of all purchases for parts and materials, including contractor and date purchased. Enter zero if no discount is offered. | %                 |
| <b>OVER \$60,000</b>  |                    |             |   |                   |
|                       |                    |             | <i>Items 52-57 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)</i>   |                   |
| 52                    | 1                  | HR.         | SUPERINTENDENT- REGULAR HOURLY RATE   | \$                |
| 53                    | 1                  | HR.         | SUPERINTENDENT- OVERTIME HOURLY RATE  | \$                |
| 54                    | 1                  | HR.         | JOURNEYMAN OR EXPERIENCED WORKER- REGULAR HOURLY RATE   | \$                |
| 55                    | 1                  | HR.         | JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME HOURLY RATE  | \$                |

|    |   |     |  |    |
|----|---|-----|--|----|
| 56 | 1 | HR. | LABORER- REGULAR HOURLY RATE   | \$ |
| 57 | 1 | HR. | LABORER- OVERTIME HOURLY RATE  | \$ |
| 58 | 1 | %   | % Discount off for Items (52-57) and materials. Invoice will include copies of all purchases for parts and materials, including contractor and date purchased. Enter zero if no discount is offered. | %  |

## Encampment Clean Up

### Price Schedule:

| Item | Approx. QTY | Unit | Article and Description  | Unit Price |
|------|-------------|------|--|------------|
|      |             |      | Items 59-65 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.) |            |
| 59   | 1           | HR.  | SUPERINTENDENT- REGULAR HOURLY RATE  | \$         |
| 60   | 1           | HR.  | SUPERINTENDENT- OVERTIME HOURLY RATE   | \$         |
| 61   | 1           | HR.  | JOURNEYMAN OR EXPERIENCED WORKER- REGULAR HOURLY RATE  | \$         |
| 62   | 1           | HR.  | JOURNEYMAN OR EXPERIENCED WORKER- OVERTIME HOURLY RATE   | \$         |
| 63   | 1           | HR.  | LABORER- REGULAR HOURLY RATE   | \$         |
| 64   | 1           | HR.  | LABORER- OVERTIME HOURLY RATE  | \$         |
| 65   | 1           | HR.  | CONFINED SPACES LABORER HOURLY RATE (NOTE: MUST HAVE OSHA LICENSE/CERTIFICATION)                   |            |
|      |             |      |  |            |
| 66   | 1           | TON  | GENERAL WASTE TIPPING FEE  | \$         |
| 67   | 1           | TON  | HAZARDOUS WASTE TIPPING FEE  | \$         |
|      |             |      |  | \$         |



## Snow Plow, Sidewalk Service and Ice Control

### Price Schedule:

| Item | Approx.<br>QTY | Unit    | Article and Description  | Unit Price |
|------|----------------|---------|--|------------|
|      |                |         | Items 68-72 – Unit Price must be all encompassing to include (Hourly Rate, equipment needed, etc.)     |            |
| 68   | 1              | HR.     | SNOW PLOW (ON TRUCK)-<br>HOURLY RATE   | \$         |
| 69   | 1              | HR.     | SIDEWALK SERVICE- ATV<br>HOURLY RATE   | \$         |
| 70   | 1              | HR.     | SIDEWALK SERVICE- LABORER<br>SHOVEL SERVICE HOURLY<br>RATE   | \$         |
| 71   | 1              | 2000 LB | ICE CONTROL- AGGREGATE<br>SPREAD TON RATE  | \$         |
| 72   | 1              | LB.     | ICE CONTROL- ICE MELT (plant,<br>animal, concrete safer- magnesium<br>chloride/calcium chloride blend) | \$         |

Item# \_\_\_\_\_  
Munis Contract# \_\_\_\_\_

**CITY OF SANTA FE  
GENERAL SERVICES CONTRACT**

**INVITATION TO BID ONLY**

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and herein after referred to as the "Contractor."

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. Definitions**

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

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

C. "You" and "your" refers to (Contract Name). "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

**2. Scope of Work**

A. The Contractor shall perform the following work:

1) On-Call Contract for Vegetation Management, Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control Services for the City of Santa Fe Parks, Open Spaces, Trails, Right of Ways and Medians, Rivers, Arroyos, Drainages and Floodplains in Santa Fe, New Mexico. This work will Include - but is not limited to, mowing, weedeating, brush removal, clearing and grubbing, tree removal, stump grinding, chipping, planting, seeding, re-vegetation, watering, herbaceous and woody pruning, fertilization, spraying (with approval from the City's Integrated Pest Manager), excavation, erosion control, stormwater BMPs, fine grading, clean-up and green waste / waste disposal, snow plowing and sidewalk shoveling, ice control, landscape and irrigation design.

2) The Contractor shall be required to provide on-call Vegetation Management, Landscape and Irrigation Design, Landscape Construction, Irrigation Installation and Repair, Encampment Clean-up, and Snow Plowing/Shoveling and Ice Control Services for any number of the activities listed under Scope of Work upon the request of the City. 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 City with an estimate (based upon the rates submitted in the Bid Form) cost summary, and project schedule required to complete the assignment or task. Project schedules, negotiated price, and completion dates shall be determined on a 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 a request issuance of a Notice to Proceed. The Contractor shall agree to provide required labor within 24 hours for emergency situations.

3) Contractor is responsible for all required permits and licenses required to perform this work. This may include, but is not limited to the Contractor being a licensed GB-98 General Building Contractor, a Registered Landscape Architect, Licensed Urban Forester or Licensed Arborist.

4) Contractor shall be responsible for adherence to the Contract Documents, Construction Documents, Specifications and approved directives. This responsibility shall include, but is not limited to, adherence to ANSI 300 standards for all tree work, and NMDOT standards for all revegetation seeding work and the City of Santa Fe Integrated Pest Management Program for all projects.

5) Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits including, but not limited to, the City of Santa Fe's Stormwater Pollution Prevention Program and Stormwater BMPs.

6) Contractor shall be responsible for verifications of all existing conditions, measurements and dimensions for bidding. Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.

See attached proposal and bid sheet from Contractor dated xx/xx/xxxx and marked Exhibit "A" attached hereto and made a part thereof.

### 3. **Compensation**

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

| <u>Deliverable item:</u> | <u>U/I (unit of issue)</u> | <u>Price</u> |
|--------------------------|----------------------------|--------------|
| 01 \$                    |                            |              |
| 02 \$                    |                            |              |

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

4. **Payment Provisions**

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

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

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end four (4) years from that date. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

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

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

## **7. Termination**

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

B. Notice; City Opportunity to Cure.

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

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

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

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

## **8. Amendment**

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

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

9. **Status of Contractor**

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

10. **Assignment**

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

11. **Subcontracting**

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

12. **Non-Collusion**

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

13. **Inspection of Plant**

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

14. **Commercial Warranty**

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

15. **Condition of Proposed Items**

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

16. **Records and Audit**

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

17. **Appropriations**

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

18. **Release**

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

19. **Confidentiality**

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

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the



Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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

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

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

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

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

22. **Scope of Agreement; Merger**

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

23. **Notice**

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

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances,

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

25. **Indemnification**

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

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

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

28. **Limitation of Liability**

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

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request

for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

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

30. **Workers' Compensation**

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

31. **Inspection**

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

32. **Inspection of Services**

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

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

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

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

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

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

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

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

### 33. **Insurance**

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

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

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

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

### 34. **Impracticality of Performance**

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

35. **Invalid Term or Condition**

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

36. **Enforcement of Agreement**

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

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

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

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

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

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

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

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

38. **Survival**

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

39. **Disclosure Regarding Responsibility**

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

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

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

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

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

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

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

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with

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

41. **Notification**

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

To the City:

To the Contractor:

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

To the Contractor:

42. **Succession**

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



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

CITY OF SANTA FE:

CONTRACTOR:

\_\_\_\_\_  
CITY MAYOR/MANAGER

\_\_\_\_\_  
NAME

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

\_\_\_\_\_  
TITLE

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

CRS# \_\_\_\_\_

Registration # \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
KRISTINE BUSTOS MIHELCIC, CITY CLERK

CITY ATTORNEY’S OFFICE (INVITATION TO BID ONLY):

Marcos Martinez  
Marcos Martinez (Nov 30, 2022 10:30 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

\_\_\_\_\_  
EMILY OSTER, FINANCE DIRECTOR

\_\_\_\_\_  
Org.Name/Org.#