

**CITY OF SANTA FE
INVITATION TO BID (ITB)**

On-Call General Electrical Services

ITB # 23/56/B

NIGP Commodity Code: 91438, 93625

Bid Due Date and Time: May 24, 2023, no later than 2:00pm

Bidder MUST complete as applicable and sign the following for their 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 ITB.

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.

Bids must be submitted electronically, via ShareFile only.
Mailed, Faxed, and Emailed bids will not be accepted.

TERMS AND CONDITIONS
(Unless otherwise specified)

1. **General:** When the City of Santa Fe's Chief Procurement Officer (CPO) or designee approves a purchase document in response to the ITB, 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 Wastewater Management Division.
8. **Packing, Shipping, and Invoicing:**
 - A. The City's purchasing document number and the Contractor's name, Wastewater Management Division'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 Wastewater Management Division's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by packing tickets.
 - 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 complete shipment.
 - C. Invoices must be submitted to the Wastewater Management Division and NOT to the City CPO.
9. **Non-Collusion:** In signing this bid the Contractor certifies they have not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this bid submitted to the CPO or designee.
10. **Default:** The City reserves the right to cancel all or any part of this order without cost to the City, if the Contractor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for

any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, such causes include but are not restricted to, acts of God or the public enemy, acts of the City, State, or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

11. **Nondiscrimination:** Contractor doing business with the City must follow 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 NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

13. **Payment Provisions: All payments under this Agreement are subject to the following provisions.**

- A. **Acceptance** - In accordance with Section NMSA 1978, § 13-1-158, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
- B. **Payment of Invoice** - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of 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 their 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 Wastewater Management Division 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 Wastewater Management Division. 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 Wastewater Management Division 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 Wastewater Management Division and the City. The Wastewater Management Division 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 Wastewater Management Division 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 – May 24, 2023, at 2:00 P.M. (MST/MDT) at which time the sealed Bids will be recorded as received and opened.

Solicitation packets are available at the following website: https://www.santafenm.gov/bids_rfps

Complete bid documents, as required, by this ITB. **ALL** Specifications, submittal required documentation, supporting materials, certificates, etc. in addition to the bid documents must be attached to form a complete responsive bid. (NMSA 1978, §§ 13-1-82 through 13-1-84 and 13-1-133)

Electronic bid submissions through the following City of Santa Fe ShareFile upload:

<https://cityofsantafenm.sharefile.com/r-r2e1c990e0b104cada29f9959d0ebfbcc>

- It is the Bidder's responsibility to ensure all documents are completely uploaded and submitted electronically via the ShareFile upload submission by the deadline set forth in this ITB. Such electronic submissions will be considered sealed bids in accordance with statute. **Note:** It is the responsibility of the Bidder to ensure bids are correct and accurate before submission. By bidding electronically, you acknowledge all amendments and it is your responsibility to ensure your bid corresponds with any amendments.
- If an amendment is processed that affects the scope of work after bid is submitted, Bidders must resubmit their bid in order for it to be considered fully submitted.
- Please ensure that you, as the Bidder, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via email by the deadline, will be deemed late. Further, a submission that is not fully complete by the deadline because the response was captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late.

All Bids received after the due date and time will be rejected and will remain unopened. **NO LATE BID CAN BE ACCEPTED.**

Chief Procurement Officer (CPO): If you are an individual with a disability and you require accommodation such as closed captioning, please contact the CPO or designee at least five (5) working days prior to the scheduled bid opening.

CPO contact information is:
Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
tkduttonleyda@santafenm.gov

Any inquiries or requests regarding this procurement should be submitted, in writing, to the Department Contact **AND** the Central Purchasing Office at the following email addresses:

Department Contact: P. Fred Heerbrandt , pfheerbrandt@santafenm.gov

Central Purchasing Office: purchasing_ITB@santafenm.gov

Bidders may contact **ONLY** the Department Contact and the Central Purchasing Office regarding this procurement and its terminology. All other city employees do not have the authority to respond.

Protests of the solicitation or award must be submitted in writing to the CPO. The CPO of the City of Santa Fe is the only authority for formal review and determination of a protest pursuant to NMSA 1978, §13-1-172, and Procurement Manual Section Y; **ONLY protests delivered directly to the CPO in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this ITB.** Protests submitted or delivered to the CPO will **NOT** be considered properly submitted.

Bidders shall promptly notify the CPO or 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.

BID OPENING: Bid opening will be accomplished through a Zoom meeting as follows:

Date: May 24, 2023
Time: 2:00 PM Mountain Time (US and Canada)
Join Zoom Meeting @:

<https://santafenm-gov.zoom.us/j/84208314187?pwd=dkx0ZHZmc3k3ZVpKOTdwdEU0aDRNQT09>

Meeting ID: 842 0831 4187
Passcode: 408444
One tap mobile
+17193594580,,84208314187#,,,,*408444# US
+12532050468,,84208314187#,,,,*408444# US

Dial by your location
+1 719 359 4580 US
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 444 9171 US
+1 669 900 6833 US (San Jose)
+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
+1 309 205 3325 US

Meeting ID: 842 0831 4187
Passcode: 408444
Find your local number: <https://santafenm-gov.zoom.us/u/kb7nMAqVDf>

All Bidders must notify the CPO or designee if any employee(s) of the Wastewater Management Division 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 designee shall have the right to reject any or all bids, and 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 designee, in writing, at least seven (7) days prior to the bid opening date.

Responsible Bidder: Bidders must, upon request of the CPO or 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 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.

Bid tabulations: Bid tabs will be posted to our website within 14 days after the bid opening date. To access go to [https://www. https://www.santafenm.gov/bid_tabulations](https://www.santafenm.gov/bid_tabulations)

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 their judgment, best serves the interest of the City.

The CPO or designee shall have the right to waive technical irregularities, and to award 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 the 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 designee.

F.O.B. Destination – Means goods are to be delivered to the destination designated by the Wastewater Management Division which is the point at which the Wastewater Management Division 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.

Doing business with the city: We appreciate your interest in submitting bids to the City. Please note that all vendors who wish to do business with the City are required to register with us and obtain a business license before any awards can be made.

To register, please visit the websites linked below and follow the instructions provided. Once you have completed the registration process and obtained your license, you will be eligible to work on City projects, provide services, and goods.

Vendor Registration: <https://cityofsantafenvendors.munisselfservice.com/Vendors/default.aspx>

Business License: <https://santafenm.gov/land-use/doing-business-with-the-city>

Living Wage:

Compliance with the City of Santa Fe and Santa Fe County’s Minimum Wage Rate Ordinances (Living Wage Ordinances). The vendor must comply with the current living wage rate and requirements posted on this page <https://santafenm.gov/economic-development/business-resources/living-wage-information>.

STATEMENT OF WORK:

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:

The Contractor shall ship in accordance with the following instructions: Shipment shall be made only against specific orders which the Wastewater Management Division 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 Wastewater Management Division. If the Contractor is unable to meet stated delivery the CPO or designee must be notified.

Term:

The term of this Agreement shall be for four (4) years from date of award. This Agreement shall not exceed four (4) years.

Method of Award:

Pursuant to the NMSA 1978, §§ 13-1-153 and 13-1-154, the City reserves the right to issue multiple awards to obtain the items listed. Award will be made to meet the best interests of the City of Santa Fe.

Tax Note:

Prices submitted by the Bidder shall not include State Gross Receipts Tax (GRT) or Local Option Tax.

Applicable NMGRRT rate will be applied and paid as determined by NM Taxation and Revenue Department at time of service.

If applicable, the Awarded Vendor(s) shall add applicable NMGRRT or Local Option Tax to their invoice at the current rates at the time of service as a separate line item to be paid by the City.

Insurance Requirements:

The Awarded Contractor shall procure and maintain at the Awarded Vendor's own expense, insurance of the kinds and in amounts herein required. This insurance shall be provided by insurance companies authorized to do business in the State of New Mexico and shall cover all operations under the Agreement, whether performed by the Awarded Vendor, the Awarded Vendor's agents, or employees, or by subcontractors. All insurance provided shall remain in full force and effect for the entire period of the work, up to and including final acceptance, and the removal of all equipment, employees, agents, and subcontractors therefrom.

Bidding Information:

The conditions and specifications set out in this ITB are inseparable and indivisible. Any Bidder, by submitting a bid, agrees to be bound by all such conditions and/or specifications. All conditions and specifications in the ITB, and all other documents required to be submitted, shall be submitted by the Bidder in their bid package. Failure to do so or any attempt to vary or change the conditions or specifications of the ITB shall, at the discretion of the City of Santa Fe, constitute grounds for rejection of the entire bid.

The prices quoted herein represent the total compensation to be paid by the City of Santa Fe for goods and/or services provided. It is understood that the Bidder providing said goods and/or services to the City of Santa Fe is responsible for payment of all costs of labor, equipment, tools, materials, federal taxes, permits, licenses, fees, and any other items necessary to complete the work provided. The prices quoted in this Agreement include an amount sufficient to cover such costs. When bidding, enter the amounts for the respective bid item unit prices to a maximum of three (3) decimal places.

The Awarded Contractor shall be considered an independent entity and not an employee of the City of Santa Fe. The Department shall provide directions regarding the time and place of performance and compliance with rules and regulations required by this Agreement.

All interested Bidders, at a minimum, must be able to provide the products and/or services identified within the scope of work of this ITB.

Bidder shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon the examination of the bidding documents, or of site and local conditions.

The City shall have the right to reject any or all bids, and in particular, to reject a bid not accompanied by data, literature or samples required by the bidding documents, or a bid in any way incomplete or irregular.

IMPORTANT: NO ADDITIONAL TERMS AND/OR CONDITIONS WILL BE ACCEPTED

SPECIFICATIONS:

The City of Santa Fe, Public Utilities Department, Wastewater Management Division is seeking bids for an on-call contract for general electrical services.

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

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

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

The Contractor shall have the technical staff to perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits. The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. The Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits.

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

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

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 Wastewater Management Division 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 Wastewater Management Division may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

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 Wastewater Management Division. 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.

Other:

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

All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards.

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

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

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

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

The Contractor may NOT add markups for the materials purchased.

The Wastewater Management Division reserves the right to procure specialty services directly from Statewide Price Agreements and other sources to provide to the awarded Contractor. Specialty services provided from Statewide Price Agreements and other sources shall be coordinated by the Contractor.

The Wastewater Management Division reserves the right to obtain quotes from multiple vendors covered under this Agreement and award a project to a contractor based on the quotes.

The Wastewater Management Division reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the Wastewater Management Division feel it is in its best interest to provide these extraordinary security services.

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

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

Contractor:

No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No 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 Wastewater Management Division 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 Wastewater Management Division in connection with the performance of the work covered by this Agreement.

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

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this 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.

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

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

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

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

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

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

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

- Clean Up and Storage:** A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The Wastewater Management Division's trash receptacles will not be used by the Contractor. Sanitary facilities will "not" be available at the job site. The contractor shall be responsible for the provision and maintenance of portable toilets.
- B. The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, and surplus materials and shall then thoroughly clean the premises and the site to Wastewater Management Division's satisfaction.
- C. Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.
- D. Storage of materials and construction equipment shall be coordinated with the Wastewater Management Division.

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

Task Order:

The Contractor shall be required to provide On-Call Electrical Services for any number of the activities listed under Scope of Work upon the request of the City. When a service is identified, the Wastewater Management Division shall provide, at a minimum, a detailed scope of work and/or drawings defining the work required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied, or the Work used/operated and is turned over to Wastewater Management Division. Final completion is the date when the project is totally complete, the punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Agreement will apply to all Task Orders.

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

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

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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 Wastewater Management Division. Preventative measures shall be taken by both the contractor and Wastewater Management Division 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.

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Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties shall endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of **sixty (60) days** from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

Inspection of Work:

If a Purchase Order is issued for the purchase of services, the following terms shall apply when applicable:

- A. Services 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 Wastewater Management Division covering the services under the Purchase Order. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Wastewater Management Division or other party to the Purchase Order during the term of performance of the Work and for as long thereafter as required.
- C. The Wastewater Management Division has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. The Wastewater Management Division shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the Wastewater Management Division 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 Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- E. If any part of the services does not conform with the requirements, the Wastewater Management Division may require the Contractor to re-perform the services in conformity with the requirements at no increase in Purchase Order amount. When the defects in services cannot be corrected by re-performance, the Wastewater Management Division may:
 - (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
 - (2) reduce the Purchase Order price to reflect the reduced value of the services performed.
- F. 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, the Wastewater Management Division may:
 - (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Wastewater Management Division that is directly related to the performance of such service; or
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THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE WASTEWATER MANAGEMENT DIVISION'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THE PURCHASE ORDER/AGREEMENT.

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The Wastewater Management Division may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the Wastewater Management Division may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. The contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved Work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Contract price.

Permits and Fees:

- A. IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.
- B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the Wastewater Management Division upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. The Contractor shall deliver a photocopy of the Building Permit to the Design Professional and the Wastewater Management Division as soon as it is obtained.

Schedule, Progress Meetings and Reports:

- A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the Wastewater Management Division's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.
- B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Wastewater Management Division.
- C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues, and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.
- D. The Contractor shall prepare a daily report each day the Contractor or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The Wastewater Management Division may request copies at any time. The reports may include:
 - 1. report date and who prepared the report;
 - 2. weather conditions – low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
 - 3. companies present by name and their number of workers, work location, total man hours that day for each company;
 - 4. equipment – type, source, units of work done, location of work, hour meter reading;
 - 5. material brought to site – description, units, quantity, quality, location, time;

6. visitors to site – name, company, time;
7. safety concerns – company, contact, noticed by, work activity, safety issue, requirement, outcome: and
8. quality assurance and control – company, description of issue, specification section, issued by.

Close-out Requirements:

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

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

- a. Work associated with Punch List(s);
- b. testing, balance, or performance operations complete and in agreement that associated work is in compliance with the Contract Documents;
- c. one hard copy and one electronic copy in .pdf format of final approved test, balance, or performance report(s) complete with directory of contents submitted to the Wastewater Management Division;
- d. as-Built drawings delivered in AutoCAD or electronic format;
- e. written certification signed by the Wastewater Management Division of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by the Wastewater Management Division;
- f. delivery of all warranties required by the Work;
- g. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
- h. completed Operations Liability insurance policy certificate, if applicable;
- i. training of staff on all applicable building systems;
- j. all Storm Water Pollution Prevention Permits (SWPPP) have been updated or closed;
- k. utility transfer to the Wastewater Management Division;
- l. Operations and Maintenance Manuals;
- m. a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

Warranty:

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems, appliances and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to the Wastewater Management Division warranties of replaced roofs and equipment offered by the manufacturer.

Bid information:

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.

Materials and Parts:

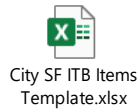
Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts. If there is no discount to be offered, enter zero. Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials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

The Wastewater Management Division 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 Wastewater Management Division’s approval.

The Wastewater Management Division reserves the right to award this Agreement to multiple vendors. Bidders must include pricing for all items starting from item 001 through item 015 in order to allow for accurate comparisons. If a Bidder fails to include one or more of those items his Bid may be rejected.

PRICE SCHEDULE: (Double Click to open)



1. DRAFT AGREEMENT

The Draft Agreement **must** be as complete as possible; including all City/Federal Terms and Conditions, Detailed Scope of Work, Definitions, etc. Legal will review and sign after Purchasing's approval of the draft ITB documents.

<The paragraph below must remain in this Appendix as notice to all Offerors.>

The Agreement included in this Appendix C represents the agreement the City intends to use to make an award. The City of Santa Fe reserves the right to make minor modifications to the Agreement prior to, or during, the award process, as necessary.

Item# _____
Munis Contract# _____

**CITY OF SANTA FE
GENERAL SERVICES CONTRACT**

On-Call General Electrical Services for the Wastewater Management Division
REQUEST FOR PROPOSALS ONLY

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and <Enter Contractor Name>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 **(Contractor 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 provide the following services:

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

The Wastewater Management Division shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the electrical work required for the project. The Contractor

shall be responsible for verification of all existing conditions, measurements, and dimensions for bidding.

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

The Contractor shall have the technical staff to perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits. The Contractor is responsible for obtaining all required licenses, fees and permits required to perform the work. The Contractor shall be responsible for any applicable Local, County, State and Federal requirements and permits.

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

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

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 Wastewater Management Division 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 Wastewater Management Division may reject any quote that fails to provide a Public Works registration number for the prime Contractor and all other listed Contractors or subcontractors.

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 Wastewater Management Division. 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.

Other:

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

All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards.

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

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

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

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

The Contractor may NOT add markups for the materials purchased.

The Wastewater Management Division reserves the right to procure specialty services directly from Statewide Price Agreements and other sources to provide to the awarded Contractor. Specialty services provided from Statewide Price Agreements and other sources shall be coordinated by the Contractor.

The Wastewater Management Division reserves the right to obtain quotes from multiple vendors covered under this Agreement and award a project to a contractor based on the quotes.

The Wastewater Management Division reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should the Wastewater Management Division feel it is in its best interest to provide these extraordinary security services.

The Wastewater Management Division reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Agreement. Any employee of the Contractor found in violation of any law, while on the Wastewater Management Division's property, will be prosecuted.

Contractor:

No person shall act as a Contractor without a license issued by the Construction Industries Division (CID), classified to cover the type of work to be performed. No 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 Wastewater Management Division 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 Wastewater Management Division in connection with the performance of the work covered by this Agreement.

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

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this 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.

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

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

overtime hours if required. The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with their work.

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

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

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

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

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

Clean Up and Storage:

- A. The Contractor will provide off-site legal disposal of all waste products, trash, and debris. The Wastewater Management Division’s trash receptacles will not be used by the Contractor. Sanitary facilities will “not” be available at the job site. The contractor shall be responsible for the provision and maintenance of portable toilets.
- B. The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, and surplus materials and shall then thoroughly clean the premises and the site to Wastewater Management Division 's satisfaction.
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- C. The Wastewater Management Division has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. The Wastewater Management Division shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the Wastewater Management Division 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 Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
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If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved Work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Contract price.

Permits and Fees:

- A. IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.
- B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- C. IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to the Wastewater Management Division upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. The Contractor shall deliver a photocopy of the Building Permit to the Design Professional and the Wastewater Management Division as soon as it is obtained.

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- A. The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for the Wastewater Management Division's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be

implemented and adhered to by the Contractor, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.

- B. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Wastewater Management Division.
- C. Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues, and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.
- D. The Contractor shall prepare a daily report each day the Contractor or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. The Wastewater Management Division may request copies at any time. The reports may include:
 - 1. report date and who prepared the report;
 - 2. weather conditions – low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
 - 3. companies present by name and their number of workers, work location, total man hours that day for each company;
 - 4. equipment – type, source, units of work done, location of work, hour meter reading;
 - 5. material brought to site – description, units, quantity, quality, location, time;
 - 6. visitors to site – name, company, time;
 - 7. safety concerns – company, contact, noticed by, work activity, safety issue, requirement, outcome: and
 - 8. quality assurance and control – company, description of issue, specification section, issued by.

Close-out Requirements:

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

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

- n. Work associated with Punch List(s);
- o. testing, balance, or performance operations complete and in agreement that associated work is in compliance with the Contract Documents;

- p. one hard copy and one electronic copy in .pdf format of final approved test, balance, or performance report(s) complete with directory of contents submitted to the Wastewater Management Division;
- q. as-Built drawings delivered in AutoCAD or electronic format;
- r. written certification signed by the Wastewater Management Division of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by the Wastewater Management Division;
- s. delivery of all warranties required by the Work;
- t. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
- u. completed Operations Liability insurance policy certificate, if applicable;
- v. training of staff on all applicable building systems;
- w. all Storm Water Pollution Prevention Permits (SWPPP) have been updated or closed;
- x. utility transfer to the Wastewater Management Division;
- y. Operations and Maintenance Manuals;
- z. a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

Warranty:

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems, appliances and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to the Wastewater Management Division warranties of replaced roofs and equipment offered by the manufacturer.

Bid information:

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.

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 Wastewater Management Division for which the work was provided.

The Wastewater Management Division 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 Wastewater Management Division's approval.

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 Paseo Real Wastewater Treatment Facility:	\$	Per Year

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 on June 30, 2027. This contract shall not exceed a total of four (4) 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:

P. Fred Heerbrandt, P.E.
Paseo Real Wastewater Reclamation Facility
73 Paseo Real
Santa Fe, NM 87507

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 MIHELICIC, CITY CLERK

CITY ATTORNEY’S OFFICE (REQUEST FOR PROPOSALS ONLY):

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

EMILY OSTER, FINANCE DIRECTOR

Org.Name/Org.#