



700 West Hillsboro Blvd, Suite 4-100  
Deerfield Beach, Florida 33441  
Fax - 954-399-7067  
[www.govspend.us](http://www.govspend.us)

ITEM # 18-0516

## Purchase Agreement

Date: 4/6/2018

CUSTOMER	GOVSPEND
<b>Organization:</b> City of Santa Fe Attention: David Kulb	<b>Name:</b> Debby Gelfand <b>Email:</b> dgelfand@smartprocure.us <b>Phone:</b> 954-299-4061

PLAN DESCRIPTION	YEARS	PMT PERIOD	PMT AMT/PERIOD	TOTAL
SmartSearch (Annual Subscription) – 2 Users	3	Annual	\$5,000.00	\$15,000.00
Discount – Approved by Management (One-time)	3	Annual	(\$1,000.00)	(\$3,000.00)
SmartProcure Dashboard	3	Annual	\$2,500.00	\$7,500.00
SmartProcure Dashboard Free When Signed by 4/30/18			(\$2,500.00)	(\$7,500.00)
<b>TOTAL:</b>			<b>\$4,000.00/yr</b>	<b>\$12,000.00</b>

NOTES
2 SmartSearch Licenses. Payment terms are net 30. This agreement is for 3 years, with annual payments of \$4,000.00 due at the beginning of each year. Discounted pricing approved by Scott Trabeaux. SmartProcure Dashboard free when signed by 4/30/18. The Agency may terminate this Agreement when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of Agency.

TERMS OF SERVICE
All orders for GovSpend products and services are subject to our Terms of Service and Privacy Policy, which can be viewed at <a href="http://govspend.us/terms">govspend.us/terms</a> and <a href="http://govspend.us/privacy">govspend.us/privacy</a> .

I HAVE READ AND ACCEPTED THE TERMS OF SERVICE.

AUTHORIZED SIGNER: [Signature]  
 TITLE OF SIGNER: Interim City Manager  
 DATE SIGNED: 5/10/18  
 CONTACT NAME FOR INVOICING: \_\_\_\_\_  
 CONTACT EMAIL FOR INVOICING: \_\_\_\_\_

DocuSigned by:  
 GOVSPEND: Debby Gelfand  
 F06023C6BDAB426...

**Purchase Agreement must be signed within 30 days from Date at the top of this Agreement.**  
**Terms are Net 30.**

Unless terminated in accordance with our terms of service or any written agreement that you have with us, the term will continue to renew automatically for consecutive annual terms at the then current, non-discounted rate. We may charge any previously authorized credit card or other account upon such renewal. However, no renewal will occur if you provide written notice of non-renewal to us before the effective date of renewal. This Purchase Agreement is deemed accepted by GovSpend upon sending of an invoice or sending of a receipt for payment by GovSpend.

Customer of Santa Fe (Customer) and GovSpend (GovSpend)

ADDENDUM

TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the Customer and GovSpend, whichever occurs last, and shall terminate on February 28, 2021

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the CUSTOMER 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 CUSTOMER 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.

APPLICABLE LAW; CHOICE OF LAW; VENUE

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

APPROPRIATIONS

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

RELEASE

GOVSPEND, upon acceptance of final payment of the amount due under this Agreement, releases the CUSTOMER, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. GOVSPEND agrees not to purport to bind the CUSTOMER to any obligation not assumed herein by the

CUSTOMER unless GOVSPEND has express written authority to do so, and then only within the strict limits of that authority.

#### INSURANCE

GOVSPEND shall maintain commercial general liability insurance throughout the term of this Agreement providing a minimum coverage in the amount of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate. GOVSPEND shall furnish the CUSTOMER with proof of insurance of GOVSPEND's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

#### THIRD PARTY BENEFICIARIES


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

#### SEVERABILITY

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


#### **Signature Lines required:**

City of Santa Fe:

  
\_\_\_\_\_  
Erik Litzenberg  
Interim City Manager

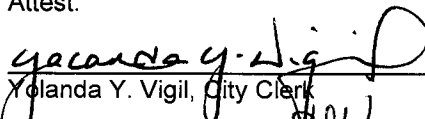
Date: 5/15/18

GOVSPEND:


  
\_\_\_\_\_  
Name & Title CFO

Date: March 22, 2018

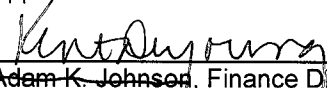
Attest:

  
\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

Approved as to form:

 3/27  
\_\_\_\_\_  
Kelley A. Brennan, City Attorney

Approved:

  
\_\_\_\_\_  
Adam K. Johnson, Finance Director  
Kent DeYours, Interim

# Terms of Service

Terms of Service **Jose chaves** 2018-01-26T08:45:12+00:00

## Welcome to GovSpend!

Thanks for using our services ("Services"). The Services are provided by GovSpend Inc. ("GovSpend"), located at 700 West Hillsboro Blvd, Suite 4-100, Deerfield Beach, FL 33441, United States. By using our Services, you are agreeing to these terms. Please read them carefully.

THE LAST SECTION CONTAINS A CLASS ACTION WAIVER. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE ANY DISPUTE WITH GovSpend. PLEASE READ IT.

## Using our Services

You must follow any policies made available to you regarding using the Services, including content provided by the Services.

Don't misuse our Services. For example, don't interfere with our Services, try to access them with any automated processes, or try to access them using a method other than the interface and the instructions that we provide. You may use our Services only as permitted by law, including applicable export and re-export control laws and regulations. You must comply with all federal, state and local laws, rules and regulations with respect to your use of the records and other information we provide to you. Using our Services does not grant ownership of any intellectual property rights in our Services or the content you access. You may not use any content unless you obtain permission from its owner or such use does not violate any law (including any rule or regulation of any government agency or other procurement content provider to us). These terms do not grant you the right to use any of our or our affiliates' trade names, trademarks logos or other branding used with our Services. You may not remove, obscure, or alter any legal notices displayed in or along with our Services or its content.

Our Services display some content that is not GovSpend's. This content is the sole responsibility of the entity that makes it available. We may review content to determine whether it is incorrect, illegal or violates our policies, and we may remove or refuse to display content that we reasonably believe violates our policies or the law. But that does not necessarily mean that we review content, so please do not assume that we do. In connection with your use of the Services, we may send you service announcements, messages, and other information. You may opt out of some of those communications.

## Your GovSpend Account

You may need to establish a GovSpend Account in order to use some of our Services. If you do we will provide directions to help you establish such account.

The Services, including its content, are intended exclusively for your own account and use. Except as we expressly permit in writing, you are not allowed to share with any third party the Services or any of its content, including by sharing your account password. You assume all responsibility for any claim, demand or damage resulting from another party obtaining your password. We may provide you the

right to share content from us with another party, through any sharing function we may provide in the Services. If we provide such feature you must use it pursuant to any directions we provide. In no event may you use third party functions to share our Services including any content from the Services.

If you learn of any unauthorized use of your password, account or content you obtained, notify us immediately at [security@GovSpend.us](mailto:security@GovSpend.us).

## **Privacy and Copyright Protection**

GovSpend's **privacy policies** explain how we treat your personal data and protect your privacy when you use our Services. By using our Services, you agree that GovSpend can use such data in accordance with our privacy policies.

## **Your Content in our Services**

Some of our Services allow you to submit content. You may retain ownership of any intellectual property rights, to the extent legally permitted, that you hold in that content. In short, what belongs to you stays yours, subject only to limited nonexclusive use rights we have.

When you upload or otherwise submit content using our Services, you give GovSpend a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), share, communicate, publish publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones. This license is irrevocable and continues perpetually even if you stop using our Services or your contract for our services expires.

You can find more information about how GovSpend uses and stores content in the privacy policy or additional terms for particular Services. If you submit feedback about our Services, we may use your feedback without obligation to you.

## **About Software in our Services**

GovSpend gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you by GovSpend as part of the Services. This license is for the sole purpose of enabling you to use the Services as provided by GovSpend, during the term of the license we grant (limited to a maximum of 1 year from the grant date, renewable on an annual basis, unless we expressly provide otherwise) and in the manner permitted by these terms. You may not copy, modify, distribute, sell, or lease any part of our Services or included software, nor may you reverse engineer or attempt to extract the source code of that software.

## **Modifying, Renewing and Terminating our Services**

We are constantly changing and improving our Services. We may add or remove functionalities or features, and we may suspend or stop a Service altogether. We may also add or create new limits to our Services at any time. We may suspend or stop providing our Services to you if you do not comply with our terms or policies or if we are investigating suspected misconduct.

While you'll remain liable for any payments left for the term and any renewal terms until termination occurs pursuant to our termination policies, you can stop using our Services at any time. We'll be sorry to see you go.

Unless sooner terminated in accordance with our terms of service or any written agreement that you have with us, the term will continue to renew automatically for consecutive terms of the same length as the original term. We may charge any previously authorized credit card or other account only upon such renewal. However, no renewal will occur if you provide written notice before the effective date of renewal that you desire not to renew.

Export credits purchased will be added to your account upon receiving payment. Line item export credits, unless otherwise stated in your purchase agreement, will expire at the earlier of one year from the date of purchase or at the end of your initial subscription period.

## **Our Warranties and Disclaimers**

We provide our Services using a commercially reasonable level of skill and care and we hope that you will enjoy using them. But there are certain things that we don't promise about our Services.

OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS, OR IN ADDITIONAL TERMS WE PROVIDE IN A CONTRACT WITH YOU, NEITHER GovSpend NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY SPECIFIC PROMISES, REPRESENTATIONS OR WARRANTIES ABOUT THE SERVICES. FOR EXAMPLE, OTHER THAN DESCRIBING IN GENERAL THAT WE OFFER PUBLICLY AVAILABLE PROCUREMENT INFORMATION FROM A VARIETY OF SOURCES, WE DON'T MAKE ANY COMMITMENTS ABOUT THE CONTENT WE PROVIDE. NOR DO WE MAKE ANY COMMITMENT ABOUT THE SPECIFIC FUNCTION OF THE SERVICES, OR THEIR RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WE PROVIDE THE SERVICES "AS IS". ADDITIONALLY, THE INFORMATION WE PROVIDE ON THIRD PARTY PURCHASES AND RELATED DATA IS GATHERED FROM THIRD PARTY SOURCES INCLUDING PUBLIC RECORDS. WE DISCLAIM ANY AND ALL REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION. SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES.

## Liability for our Services

TO THE EXTENT PERMITTED BY LAW, GovSpend AND ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS AND DISTRIBUTORS, WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF GovSpend AND ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS AND DISTRIBUTORS, FOR ANY CLAIM UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES. WITHOUT LIMITING ANY OTHER LIMITS OR DISCLAIMERS, IN ALL CASES, GovSpend AND ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

## About these Terms

We may modify these terms or any additional terms that apply to our Services. You should look at the terms regularly. We'll post notice of modifications to these terms on this page. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted. However, changes addressing new functions for Services or changes made for legal reasons will be effective immediately. If you do not agree to the modified terms for the Service, you should discontinue your use of that Service. If there is a conflict between these terms and the additional terms, the additional terms will control for that conflict. These terms control the relationship between GovSpend and you. They do not create any third party beneficiary rights. If you do not comply with these terms, and we do not take action right away, this does not mean that we are giving up any rights that we may have (such as taking action in the future). If it turns out that a particular term is not enforceable, this will not affect any other terms. The internal laws of the State of New Mexico, in the U.S.A. All claims arising out of or relating to these terms or the Services will be litigated exclusively in the federal or state courts of Santa Fe, New Mexico, USA, and you and GovSpend consent to personal jurisdiction in those courts. For information about how to contact GovSpend, please visit [www.GovSpend.us](http://www.GovSpend.us). For information about how to contact GovSpend, please visit us at [www.GovSpend.us](http://www.GovSpend.us).

## Class Action Waiver

Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. No party will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity. No proceeding will be combined with another without the prior written consent of all parties to all affected proceedings.

GOVSPEND:

 CFO

March 22, 2018