

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and Summit Environmental Technologies, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

- 1) Provision of analytical services for the testing of liquids and sludges as listed below.
- 2) Provision of necessary sample bottles with preservative if necessary.
- 3) Provision of shipping costs/pick-up services.
- 4) Provision of Analytical Reports with QA/QC summaries included to be reported in a timely manner.

The following table includes but is not limited to the analyses that must be performed in a one year period as per Facility's Federal and State permits.

TOTAL QUANTITY	MATRIX	METHOD	PARAMETERS
32	liquid	EPA 300.0	Chloride
10	liquid	EPA 420.1	*Total Phenols
26	liquid	EPA 335.2	*Total Cyanide
24	liquid	EPA 624	*40CFR Pt. 122, App. D, Table II VOCs
6	liquid	EPA 625	*40CFR Pt. 122, App. D, Table II SVOCs
6	liquid	EPA 608	*40CFR Pt. 122, App. D, Table II PCBs and Pesticides
24	liquid	EPA 1664	Oil and Grease
4	Sludge	EPA 1311	Complete TCLP
24	Sludge	EPA 300.0	Nitrate as N
24	Sludge	EPA 351.2	Total Kjeldahl Nitrogen
6	Sludge	EPA 200.7/200.8	As, Cr, Ni
6	Sludge	EPA 608	PCBs
24	Sludge	SM 2540 B	% Solids
4	liquid	EPA 200.7/200.8/245.1	Al, As, B, Cd, Cr, Cu, Pb, Hg, Mo, Ni, Se, Ag, Zn
6	liquid	EPA 200.7/200.8	Al, As, Ba, B, Cd, Co, Cu, Cr, Fe, Pb, Mo, Mn, Ni, Se, Ag, Zn
2	liquid	EPA 200.7/200.8	Al, As, Ba, B, Cd, Co, Cu, Cr, Fe, Pb, Mo, Mn, Ni, Se, Ag, U, Zn
2	liquid	EPA 300.0	Flouride
2	liquid	EPA 300.0	Sulfate

2	liquid	EPA 903.0/904.0	Radioactivity: Combined Radium 226 & Radium 228
8	liquid	EPA 245.1	Mercury
8	liquid	EPA 608	PCBs
2	liquid	EPA 625	Benzo-a-pyrene
2	liquid	EPA 625	PAHs: Naphthalenes plus monomethylnaphthalenes
2	liquid	EPA 624	**Partial VOC List
2	liquid	EPA1613B	2,3,7,8 TCDD

*EPA Region 6 MQL Table (Exhibit B)

**Partial VOC List (Exhibit C)

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate as listed in Exhibit "A", such compensation not to exceed \$60,000, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \$5,062.25 shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$65,062.25). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **August 31, 2022** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA

1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state

vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **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.

8. **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.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. **Confidentiality.**

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

11. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. **Conflict of Interest; Governmental Conduct Act.**

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

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

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during

the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

13. Amendment.

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

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. 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.

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

20. Records and Financial Audit.

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

21. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City and the Risk Management Division of the New Mexico General Services Department by certified mail.

22. 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.

23. 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.

24. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: [Patricia Rosacker, 73 Paseo Real; Santa Fe, NM 87507,
parosacker@santafenm.gov]

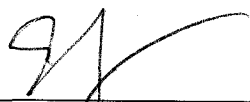
To the Contractor: [Mo Osman, 3310 Win St.; Cuyahoga Falls, Ohio 44223;
MOsman@settek.com].

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

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


CITY OF SANTA FE:



ERIK LITZENBERG
ITERIM CITY MANAGER

DATE: 7/5/18

CONTRACTOR:
Summit Environmental Technologies



DR. MO OSMAN
PRESIDENT
DATE: 7-10-18

CRS# 03-189663-00-4
Registration # 18-00110314

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL
CITY CLERK *YV*

APPROVED AS TO FORM:

MDM 6/27
CITY ATTORNEY

APPROVED:

Mary McCoy 5/9/18
FINANCE DIRECTOR *MM*

52454.510250 & 52458.510250
Business Unit Line Item

Attachment 1

Scope of Work

Performance Measures

(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

OR: Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below *(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties).*

QUOTE from Summit Environmental Technologies, Inc.

To: Patricia Rosacker – June 4, 2018

SCOPE OF SERVICES that Summit will provide:

- All necessary sample bottles and coolers needed to send samples for analyses.
- Payment for all shipping costs of coolers and samples.

The following is a quote based upon the analyses that are being requested:

Item	qty	Unit price-\$	total-\$
Cl	10	32	320
Phenol	10	25	250
CN	26	21	546
VOC	24	75	1800
SVOC	6	135	810
Pest/PCB	6	110	660
O&G	24	30	720
TCLP	4	775	3100
NO3	24	18	432
TKN	24	25	600
PCB	6	50	300
% Solids	24	7	168
Metals-12 + Hg	4	135	540
Metals-16	4	160	640
metals-17	2	170	340
F	2	15	30
SO4	2	15	30
Ra-226/228	2	200	400
Hg	8	15	120
PCB	8	50	400
Benzo(a)Pyrene	2	75	150
PAH	2	85	170
VOC	2	75	150
TCDD	2	295	590
Sludge for As,Cr,Ni	6	30	180
TOTAL-\$			13,446

Thank you for the opportunity. I will personally take care of this account if awarded the work and will guarantee fast turnaround time of 7 days or less. Shipping is included.

Thank you again.

Respectfully,

Dr Mo Osman

Corporate Headquarters:

3310 Win St.
Cuyahoga Falls, Ohio 44223
Tel: 330-253-8211
Fax: 330-253-4489
Web: www.settek.com

Video Tour: <http://www.settek.com/videos>



Exhibit "B"

The following Minimum Quantification Levels (MQL) is to be used for reporting pollutant data for NPDES permit applications and/or compliance reporting.

POLLUTANTS	MQL ug/l	POLLUTANTS	MQL ug/l
METALS, CYANIDE, RADIOACTIVITY and CHLORINE			
Aluminum	2.5	Molybdenum	10
Antimony	60	Nickel	0.5
Arsenic	0.5	Selenium	5
Barium	100	Silver	0.5
Beryllium	0.5	Thallium	0.5
Boron	100	Uranium	0.1
Cadmium	1	Vanadium	50
Chromium	10	Zinc	20
Cobalt	50	Cyanide	10
Copper	0.5	Cyanide, weak acid dissociable	10
Lead	0.5	Total Residual Chlorine	33
Mercury *1	0.0005/ 0.005		
DIOXIN			
2,3,7,8-TCDD	0.00001		
VOLATILE COMPOUNDS			
Acrolein	50	1,3-Dichloropropylene	10
Acrylonitrile	20	Ethylbenzene	10
Benzene	10	Methyl Bromide	50
Bromoform	10	Methylene Chloride	20
Carbon Tetrachloride	2	1,1,2,2-Tetrachloroethane	10
Chlorobenzene	10	Tetrachloroethylene	10
Chlorodibromomethane	10	Toluene	10
Chloroform	50	1,2-trans-Dichloroethylene	10
Dichlorobromomethane	10	1,1,2-Trichloroethane	10
1,2-Dichloroethane	10	Trichloroethylene	10
1,1-Dichloroethylene	10	Vinyl Chloride	10
1,2-Dichloropropane	10		
ACID COMPOUNDS			
2-Chlorophenol	10	2,4-Dinitrophenol	50
2,4-Dichlorophenol	10	Pentachlorophenol	5
2,4-Dimethylphenol	10	Phenol	10
4,6-Dinitro-o-Cresol	50	2,4,6-Trichlorophenol	10
BASE/NEUTRAL			
Acenaphthene	10	Butyl Benzyl Phthalate	10
Anthracene	10	2-Chloronapthalene	10
Benzidine	50	Chrysene	5
Benzo(a)anthracene	5	Dibenzo(a,h)anthracene	5
Benzo(a)pyrene	5	1,2-Dichlorobenzene	10
3,4-Benzofluoranthene	10	1,3-Dichlorobenzene	10
Benzo(k)fluoranthene	5	1,4-Dichlorobenzene	10
Bis(2-chloroethyl)Ether	10	3,3'-Dichlorobenzidine	5
Bis(2-chloroisopropyl)Ether	10	Diethyl Phthalate	10
Bis(2-ethylhexyl)Phthalate	10	Dimethyl Phthalate	10

Di-n-Butyl Phthalate	10	Indeno(1,2,3-cd)Pyrene	5
2,4-Dinitrotoluene	10	Isophorone	10
1,2-Diphenylhydrazine	20	Nitrobenzene	10
Fluoranthene	10	n-Nitrosodimethylamine	50
Fluorene	10	n-Nitrosodi-n-Propylamine	20
Hexachlorobenzene	5	n-Nitrosodiphenylamine	20
Hexachlorobutadiene	10	Pyrene	10
Hexachlorocyclopentadiene	10	1,2,4-Trichlorobenzene	10
Hexachloroethane	20		

PESTICIDES AND PCBS

Aldrin	0.01	Beta-Endosulfan	0.02
Alpha-BHC	0.05	Endosulfan sulfate	0.02
Beta-BHC	0.05	Endrin	0.02
Gamma-BHC	0.05	Endrin Aldehyde	0.1
Chlordane	0.2	Heptachlor	0.01
4,4'-DDT and derivatives	0.02	Heptachlor Epoxide	0.01
Dieldrin	0.02	PCBs	0.2
Alpha-Endosulfan	0.01	Toxaphene	0.3

(MQL's Revised November 1, 2007)

Footnotes:

- *1 Default MQL for Mercury is 0.005 unless Part I of your permit requires the more sensitive Method 1631 (Oxidation / Purge and Trap / Cold vapor Atomic Fluorescence Spectrometry), then the MQL shall be 0.0005.

EXHIBIT "C"

PARTIAL VOC LIST

(20.6.3103NMAC)

1. BENZENE
2. CARBON TETRACHLORIDE
3. CHLOROFORM
4. 1,1 – DICHLOROETHANE
5. 1,2 – DICHLOROETHANE (EDC)
6. 1,1 – DICHLOROETHYLENE (1,1-DCE)
7. ETHYLBENZENE
8. ETHYLENE DIBROMIDE (EDB) – 1,2 DIBROMOETHANE
9. METHYLENE CHLORIDE
10. TOLUENE
11. 1,1,2,2 – TETRACHLOROETHANE
12. 1,1,2,2 – TETRACHLOROETHYLENE (PCE)
13. 1,1,1 – TRICHLOROETHANE
14. 1,1,2 – TRICHLOROETHANE
15. 1,1,2 – TRICHLOROETHYLENE (TCE)
16. VINYL CHLORIDE
17. XYLENES (TOTAL)