

City of Santa Fe Contract
Quarterly Mechanical Roof Cleaning at the Genoveva Chavez Community Center

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **CES/Keers Remediation, Inc** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Agreement Administrator" means the individual appointed by the City to administer the Price Agreement.

B. "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.

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

D. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

E. "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.

F. "You" and "your" refers to **CES/Keers Remediation, Inc**. "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work** This scope of work is for the quarterly cleaning of the Genoveva Chavez Community Center Mechanical Roofs according to the **CES/Keers Remediation, Inc** Proposal (CES GCCC Quarterly Cleaning) Dated July 20, 2018 attached hereto and incorporated herein.

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 Mobilization Fee		(4) \$1,200.00
02 Remediation Supervisor/Project Manager 40-hours @ \$55.00/hour		(4) \$2,200.00
03 Remediation Workers 160-hours @ \$50.00/hour		(4) \$8,000.00
04 Waste Disposal and Transportation		(4) \$600.00
05 NMGR (8.4375%)		(4) \$1,012.50

The total compensation under this Agreement shall not exceed \$52,050.00 - 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. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for the City issuing Contract Orders under this Price Agreement.
- C. 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

6/30/2020. The City reserves the right to renew the contract on an annual basis by mutual Agreement 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 Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor 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 Vendor; 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 Vendor 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**

This Price Agreement may be amended by mutual Agreement of the City and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the bid and contract documents.

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**

A. Neither this price Agreement nor any orders placed under this price Agreement, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 10B below or as expressly authorized in writing by the City. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this price Agreement.

B. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the City as to goods, services, and materials purchased in connection with this bid are hereby assigned to the City.

11. **Subcontracting**

The Contractor shall not subcontract any portion of any services to be performed under this Agreement without written approval from the City. The following sub-contractor(s) have been approved to supply resources for this Agreement <NONE>.

12. **Non-Collusion**

In signing this Agreement, the Vendor/Contractor certifies the Vendor/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 Vendor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Vendor 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. Vendor 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. **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, § 38-3-1 (G). 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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.

b. Property damage or combined single limit coverage: \$1,000,000.

c. Automobile liability (including non-owned automobile coverage): \$1,000,000.

d. Umbrella: \$1,000,000.

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.

33. **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.

34. **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.

35. **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.

36. **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:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. 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:

- i. 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;

- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. 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.

37. **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.

38. **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.

39. **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.

40. **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.

Jerry L. Schilling, Recreation Section Manager
City of Santa Fe
jlschilling@santafenm.gov
(505) 955-4075
3221 Rodeo Road
Santa Fe, New Mexico 87507

To Contractor:
Keers Remediation, Inc
5904 Florence Ave NE
Albuquerque, New Mexico 87113

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 Contractor:
Keers Remediation, Inc
5904 Florence Ave NE
Albuquerque, New Mexico 87113

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.

41. **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:


ALAN WEBBER,
MAYOR

DATE: 10/15/18

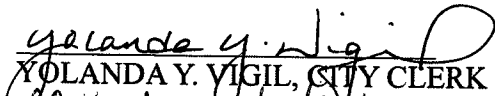
CONTRACTOR:


AMARANTE JARAMILLO
CES/KEERS, INC

DATE: 9/11/18

CRS# 02-947580-00-5
Registration # 18-0011035

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 10/10/18

APPROVED AS TO FORM:

 8/13

ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:



MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: 52702.510310 (Exp Facility Operation / Service Contracts)

Proposal/Service Agreement

Project Title: CES GCCC Quarterly Cleaning

Proposal Number: 18-127

Date: July 20, 2018

General Conditions

Scope of Work

Keers Remediation, Inc., (Contractor) agrees to furnish necessary labor, materials, supplies, equipment and tools to perform and complete in a professional workmanlike manner, the services described in the proposal.

Payment

100% upon completion of scope of work unless credit arrangements have been made, or work duration is longer than one (1) month. Then the contractor will submit invoices monthly, or as otherwise agreed, for completed portions of services or additional work authorized pursuant to Paragraph 5 herein. Client agrees to pay the invoiced amount within 20 days from date of invoice. Any payment not received by Contractor within 30 days shall be considered delinquent and the amounts due contractor shall accrue a late charge of 1 percent per month for each month from date of invoice. In the event any payment due Contractor under the terms of this Agreement is delinquent, Contractor may suspend all services until all delinquent payments have been received.

Standard of Care

- While performing services under this agreement, Contractor shall exercise the degree of skill ordinarily exercised where performing the kind of services stated in the "Scope of Work".
- Contractor assumes no responsibility for errors in public data utilized, statements from sources outside of Contractor, or developments resulting from situations outside the control of the contractor.
- The standard of care set forth herein is the sole and exclusive standard of care that will be applied to measure Contractor's performance of the services or the creation of its work product.

There are no other representations or warranties made by Contractor. In particular, but not by way of limitation, Contractor makes no representation or warranty that the implementation or use of the recommendations, findings, conclusions, or final results produced as a result of performing the services will result in compliance with applicable law or provide a perfect result. Furthermore, with regard to microbial remediation, the contractor makes no warranties, claims, or guarantees that mold has been forever eliminated. It is possible that mold may return, unless the environment which supports mold growth is altered, which may or may not be possible, even given the best efforts of the contractor. Moreover, to the extent allowed by law, any and all implied representations or warranties arising out of the services are hereby expressly disclaimed and negated. **IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

Time For Performance

The work will be completed within the calendar days as described in the scope of work, or as expeditiously as possible. If the Contractor is delayed at any time in the progress of the work by any act or omission of the Client, or by its officers, directors, employees, agents and assigns ("Representatives"), or by any separate contractor employed by the Client, or by changes ordered in the work, or by labor dispute, fire, unusual delay in transportation, adverse weather conditions, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the owner pending arbitration, then the contract time shall be extended by agreement for such reasonable time as required.

Additional Work

The Client, without invalidating the agreement, may order changes in the work within the general scope of the agreement consisting of additions, deletions or revisions of the scope, cost of services and time being adjusted accordingly. All such changes in the work shall be authorized in writing. The cost or credit to the Client resulting from a change in the work shall be determined by one or more of the following: (1) by mutual agreement of either a fixed fee and/or unit price to be multiplied by the units worked in determining the total sum; (2) hourly rate per

man hour multiplied by the man hours expended; or (3) by other mutually agreeable cost methods. If the outcome of the completed work indicates that additional or different work is required, the Contractor will notify the Client and will use his best professional judgment in assisting the Client in deciding how to proceed. The cost of services will be equitably adjusted by written change order or supplemental agreement between both parties.

Access, Approvals, Permits

Client shall arrange for access and make all provisions for Contractor to enter public and private property as required for Contractor to perform the specified services. Client shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approval and consent from others as may be necessary. Unless expressly stated in the proposal as the responsibility of contractor.

Client Provided Information

Work will not commence until the Contractor has received a duly executed copy of this contract. The Client shall direct its officers, directors, employees, subcontractors and agents to render reasonable assistance and to provide (promptly upon request) all necessary or appropriate data to the Contractor in connection with its performance under this agreement.

Any data furnished shall be furnished at the Client's expense, and the Contractor shall be entitled to rely upon its accuracy and completeness. The Client shall locate for the Contractor, and shall assume responsibility for the accuracy of his representations, as to the locations of all underground utilities, tanks, structures, or other installations, unless the express responsibility of the Contractor as stated in the "Scope of Work".

Safety

In an emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation and/or extension of time claimed by the Contractor on account of emergency work shall be determined as set forth, under the Additional Work section.

Hazardous Substances

Nothing herein shall be construed or interpreted as requiring Contractor to assume the status of a generator of any hazardous substances or hazardous materials, as those terms are defined under any applicable federal, state and local laws, statutes, regulations, ordinances, rules or orders. If any hazardous, toxic or dangerous substances as defined by federal, state or local laws, statutes, regulations, ordinances, rules or orders, ("Hazardous Substances") are encountered at the site, and if these Hazardous Substances require handling, transportation or disposal at an off-site facility, Contractor will assist in advising the Client of his options. However, Contractor will not "arrange" for disposal of, accept title to, sign manifests for, or take control of any Hazardous Substances, unless expressly stated in the "Scope of Work". ~~Client shall indemnify and hold Contractor harmless from any claims, damages, fines and fees, litigation or expenses arising out of or in any way related to handling, transportation and disposal of any Hazardous Substances in the course of Contractor's performance of this Agreement.~~



Restoration

The Client understands that in the normal course of work, some minor damage to property may occur including damage to landscaping, pavement, sprinkler systems, and interior building finishes. While the Contractor will act to minimize damage, the Client understands that the cost of restoration is not included in this agreement unless expressly stated in the scope of work.

Independent Contractor

Contractor shall perform all work under this agreement as an independent contractor, retaining complete control over its personnel and operations. Neither Contractor nor its subcontractors shall be, or shall be construed to be Client's

Proposal/Service Agreement

Project Title: CES GCCC Quarterly Cleaning

Proposal Number: 18-127

Date: July 20, 2018

employees or agents, or have authority to bind Client in any way.

Indemnity

a. Contractor shall indemnify and hold harmless Client, and its respective officers, directors, employees, subcontractors, agents and assigns ("Representatives"), from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Contractor or its Representatives; and, provided that such injury, death, or property damage is not caused by the sole or contributory negligence of Client, or its Representatives; and provided further, that Contractor's liability hereunder shall be limited to and not exceed the insurance coverage and limits of liability identified in this proposal or the total cost of services under of this agreement, whichever amount is less.

b. Client shall indemnify and hold harmless Contractor, and its Representatives, from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Client or its Representatives; and provided further that such injury, death, or property damage is not caused by the sole or contributory negligence of Contractor or its Representatives.

c. The provisions this paragraph shall survive the completion of the work or the termination of the agreement between Contractor and Client.

Dispute Resolution

All claims, disputes and other matters in question between the Contractor and Client arising out of, or relating to, this agreement or breach thereof, shall be decided by arbitration in accordance with the construction industry rules of the American Arbitration Association, unless the parties mutually agree otherwise. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed in writing with the other party to the contract agreement within a reasonable time after the claim, dispute or other matter in question has arisen.

Subcontractors

The Contractor reserves the right to remove any person, firm or corporation (Subcontracted to the Contractor) from participation in the services being provided to the Client.

Termination

If the work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, through no act or fault of the Contractor or its Representatives, or if the Client has failed to make payment as provided in this agreement for work performed, or has otherwise stopped the contractor's work, then the Contractor may at his option provide three (3) days notice to the Client, terminate this agreement and recover from the Client, payment for all work completed, with all costs arising out of such termination.

Sample Handling and Retention

Generally test samples or specimens are consumed and/or substantially altered during analysis. Contractor, at its sole discretion, will cause disposal of test samples, unless Client requests otherwise, in writing.

Reporting

By virtue of entering into this Agreement and providing services hereunder, Contractor does not assume responsibility for any conditions at the site that may present a danger, either potential or real, to the health, safety or the environment, except as set forth in the "Scope of Work".

Client hereby agrees to promptly notify Contractor of any Hazardous Substances and any special risk to human health, the environment or equipment on site of which Client is or becomes aware. By virtue of entering into this agreement or of providing services hereunder, Contractor does not assume control of or

responsibility for reporting to any federal, state or local public agencies or governmental authorities any conditions at the site that may present a potential danger to health, safety, or the environment.

Waste Characterization

Prior to Contractor's performance of any services under this agreement, Client shall provide Contractor with an accurate waste characterization, which fully informs Contractor of the chemical, physical and hazardous characteristics of any waste to be managed pursuant to this agreement, unless the express responsibility of Contractor as stated in "Scope of Work". Client shall promptly notify Contractor if the waste characterization, or process generating the waste, changes in any respect during the term of this agreement.

Non-conforming Waste

Within a reasonable time after receipt of waste, Contractor may reject any waste that does not materially conform to the characterization or sample provided to Contractor by Client. Contractor shall immediately orally notify Client of such rejection and the manner in which the waste is non-conforming and shall confirm such oral notification in writing within a reasonable period of time. In the event of such rejection, Contractor shall have the right to: (a) return the waste to Client; or (b) arrange for treatment or disposal of the waste at another permitted facility. In any event, Client shall pay all additional fees and costs incurred in the handling of non-conforming waste, including, without limitation, transportation, storage, treatment, and disposal charges.

Title To Waste

Title, responsibility and risk of loss for waste conforming to the waste characterization shall pass from Client to Contractor as follows: (a) if Contractor provides transportation, upon departure of the Contractor vehicle carrying the waste from Client's site; (b) if Client provides transportation, upon acceptance of the waste at the Contractor facility or facility designated by Contractor.

Entire Agreement

The agreement and any referenced attachments constitute the entire agreement between Contractor and Client and supersedes all prior or oral or written representations or agreements. This agreement shall not be modified except in writing and signed by both parties.

Severability

If any of these General Conditions shall be finally determined to be invalid and unenforceable in sole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties.

Applicable Law and Venue

This Agreement shall be governed by the laws of the state of New Mexico. All actions, disputes, claims or other matters arising from this agreement shall be decided per the "Disputes Clause" in Albuquerque, New Mexico.

Limitations of Liability

In no event will the contractor be liable to the Client or anyone else (including third-party beneficiaries), for any consequential, incidental, special or indirect damages, including lost revenue and profits that result in any way connected with the services provided herein.

The Client agrees that the liability of the contractor arising out of any kind of legal claim (whether in contract, tort or otherwise) in any way connected with the services provided will not exceed the amount the Client originally paid the contractor for the service, or the available insurance identified elsewhere in the agreement, whichever amount is less.

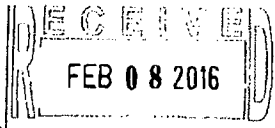


EXHIBIT B

Keers Remediation, Inc.

COOPERATIVE EDUCATIONAL SERVICES

February 03, 2016

Contract Award Letter

Amarante Jaramillo Jr.
KEERS REMEDIATION, INC.
5904 Florence Ave NE
Albuquerque, NM 87113

Re: ACCEPTANCE OF OFFER and CONTRACT AWARD For:

16-010B-C121-ALL Removal and Disposal of Hazardous and/or Contaminated Goods and Materials, such as Asbestos, Chemicals, Soil, Paints, Mold, etc.
16-010B-C111-ALL Assessing, Abating and Disposing of Asbestos Containing Materials

Dear Mr. Jaramillo Jr.,

On behalf of Cooperative Educational Services (CES), I thank you for responding to our 2016-010 solicitation. The responses have been reviewed and it is my pleasure to inform you that you have been selected to provide the products and services indicated in your response.

The enclosed Acceptance of Offer and Contract Award is from the cover sheet that you submitted in your bid. I suggest that you take this award and place it with your copy of the bid that you submitted. Please read carefully the paragraph above the authorized signature. It outlines the agreement and specifies the term of the award.

We would like to include information concerning your company in our procurement directory called the Blue Book. Each of our members and participating entities receives a copy of this Blue Book. It enables their staff to look up important information concerning each vendor before placing an order. Although space is limited, the description below is intended as a quick reference of your company. If you would like to revise the description, please provide any changes in writing to CES' procurement office.

AA 2023 2024

Keers Remediation is very qualified to provide removal and disposal of hazardous and/or contaminated goods and materials for CES Members and Participating Entities.

On CES' website (www.ces.org), you can download contact information for all of CES' members and participating entities. You are invited to send marketing materials directly to these institutions.

We look forward to working with you. Please let us know if you have questions or if we can be of any further assistance.

Sincerely yours,

Cooperative Educational Services

David Chavez

David Chavez,
Executive Director
Ofc: 505.344.5470
Fax: 505.344.9343

COOPERATIVE EDUCATIONAL SERVICES (CES) is a non-profit organization that provides a variety of services to its members and participating entities. CES is committed to providing high-quality services and products to its members and participating entities. CES is a member of the National Cooperative Purchasing Council (NCPC) and is a proud member of the National Cooperative Business Association (NCBA).

•Your New Mexico Purchasing Cooperative Since 1979•

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Form B

**ACCEPTANCE OF OFFER
and CONTRACT AWARD**

RFP NUMBER 2016-010

See attached cover letter for specific awarded contract number(s).

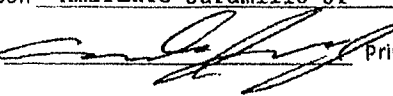
OFFER TO BE COMPLETED BY VENDOR

In compliance with the Request for Proposal, the undersigned warrants that I/we have examined the Instruction to Offerors, and, being familiar with all of the conditions surrounding the proposed projects, hereby offer and agree to furnish all labor, materials, and supplies incurred in compliance with all terms, conditions, specifications and amendments in this Request for Proposal and any written exceptions in the offer. Signature also certifies understanding and compliance with the certification requirements of the Categorical Terms and Conditions. The under-signed understands that his/her competence and responsibility and that of his/her proposed subcontractors, time of completion, as well as other factors of interest to CES as stated in the evaluation section, will be a consideration in making the award.

Company Name Keers Remediation, Inc

Address 5904 Florence Av. NE City Albuquerque State NM Zip 87113

Contract Contact Person Amarante Jaramillo Jr

Authorized Signature  Printed Name Amarante Jaramillo Jr

OFFER EXTENDED TO TEXAS SERVICE AGENCIES

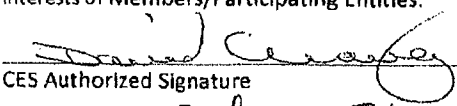


If you are willing to enter into a contract with TexBuy (ESC16) Texas Educational Service Center Region 16 under the same terms and conditions as in this RFP, place initials in the box.

ACCEPTANCE OF OFFER AND CONTRACT AWARD TO BE COMPLETED ONLY BY CES

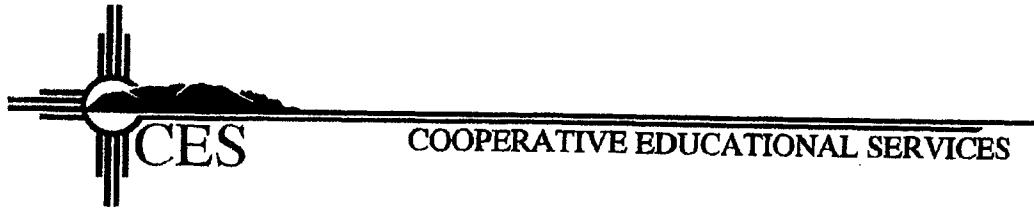
Contract period: It is CES' intent to award a multi-term contract for the specified materials, equipment and services. The initial contract term shall be for one (1) calendar year from the date of contract award. By mutual written agreement between CES and contractor, the contract may be extended for up to three (3) consecutive additional 12-month periods, beginning immediately after expiration of the prior term. However, no contract extension exists unless and until contractor is so notified by CES.

Month-to-month extensions: CES reserves the right to offer month-to-month extensions if that is determined to be in the best interests of Members/Participating Entities.


CES Authorized Signature

Awarded this 3rd day of February 2016





EXTENSION OF CONTRACT

made by and between

KEERS REMEDIATION, INC.

and

Cooperative Educational Services

Said Contract(s) being numbered:

16-010 914-040 KER Removal and Disposal of Hazardous and/or Contaminated Goods and Materials, such as Asbestos, Chemicals, Soil, Paints, Mold, etc.
16-010 914-047 KER Assessing, Abating and Disposing of Asbestos Containing Materials

The existing Contract initially commenced on February 3, 2016 and will expire on February 1, 2018. The Term of Contract and Extension in 2016-010 RFP C provides the Contract may be extended annually for up to three (3) additional one (1) year terms by mutual written agreement through February 3, 2020. Cooperative Educational Services desires to extend the Contract for an additional term of one (1) year until February 1, 2019. Upon the signature of an authorized officer of the above named company or corporation, the Contract is hereby extended.

This extension shall be subject to the same Terms and Conditions contained in the original Bid Document and in Contract Number 2016-010 RFP C

PRICE ADJUSTMENTS

A written request to CES for a price adjustment to this contract must be in accordance with the stated RFP terms, conditions and stipulations agreed upon at contract award. The request to adjust pricing shall include all documentation for consideration of approval. Upon CES approval, the documents shall be placed in the procurement file for audit purposes. Your request must be submitted prior to the yearly renewal date of the contract or at contract renewal. The price adjustments shall apply to all CES Members and Participating Entities. CES reserves the right to approve or disapprove such requests.

COOPERATIVE EDUCATIONAL SERVICES

Authorized Signature *Daniel Chavez* Date October 27, 2017

Contractor agrees to provide complete information of any deleted and new products or price adjustments as allowed under headings (Discontinued Products) and (New Technology and Price Reduction) of the RFP.

Authorized Signature *[Signature]* Date 10/27/17
Printed Name ANARUTE J. BARNETT JR. Title President/COO

NOTE: This Contract Extension should be received by 4:00 p.m. at the offices of CES on 02/01/2017

If you do not want to extend this Contract, please sign below and return this agreement.

Discontinue: We desire to discontinue the contract effective 2/1/2018

Authorized Signature _____ Date _____

"Your New Mexico Procurement Partner Since 1979"

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