

SUPERION, LLC SUPPORT SERVICES AGREEMENT
CONTRACT NO. SNFE-2345LG-180034

This Superior, LLC Support Services Agreement ("Agreement") is entered into by and between **Superion, LLC.** (**Superion**) with its principal place of business at: 1000 Business Center Drive, Lake Mary, Florida 32746;

and

City of Santa Fe
(Customer),

with its principal place of business at
 200 Lincoln Avenue
 Santa Fe, NM 87501

1.

Application	Qty	Term 7/1/18-6/30/19
Electronic Learning Pass (HELP) Card-LF	1	\$ 5,000.00
Tax (Type - TR)	1	\$ 256.25
Total		\$ 5,256.25

Application	Qty	Term 7/1/18-6/30/19
GTG Looking Glass Viewer Web	1	\$ 4,187.06
GTG - Address Manager	1	\$ 2,512.24
NaviLine Click2Gov3 - Core Module	1	\$ 1,653.84
Web Enablement	1	\$ 608.21
Tax (Type - MA)	1	\$ 459.27
Total		\$ 9,420.62

Application	Qty	Term 7/1/18-6/30/19
NAVI-DMS-Document Management Services	1	\$ 1,295.94
BP Voice Response Interface	1	\$ 1,838.57
NAVI - Building Permits	1	\$ 6,377.53
NAVI - Code Enforcement	1	\$ 2,694.01
NaviLine - Land/Parcel Management	1	\$ 4,034.65
NAVI - Business Licenses	1	\$ 3,894.20
NAVI - Planning/Engineering	1	\$ 6,377.53
NAVI - Cash Receipts	1	\$ 3,881.43
Retrofit Modification Option	14	\$ 1,400.00
NaviLine Click2Gov3 - Code Enforcement	1	\$ 2,461.49
NaviLine Click2Gov3 - Building Permits	1	\$ 2,349.28
NaviLine Click2Gov3 - Occupational Licenses	1	\$ 2,688.61
NaviLine Click2Gov3 - Planning and Engineering Module	1	\$ 2,160.72
CAD400 SunPro Interface	1	\$ 4,100.45
Multi Agency or Jurisdictional FIRES	1	\$ 880.98
Tax (Type - MA)	1	\$ 2,379.81
Total		\$ 48,815.20

2. **TERM.** The Term of this Agreement shall be as stated above (“Initial Term”) Superion will invoice Customer when the Support Services Fees are due.
3. **SUPPORT SERVICES.** For so long as Customer has purchased Support Services and is current in its payments to Superion, Customer shall be entitled to receive, and Superion agrees to provide, the following services which are hereinafter referred to as “Support Services” for the Licensed Programs listed in Paragraph 1 hereof:
 - 3.1 **Program Fix Service.** Customer shall promptly report to Superion any errors or defects in the Licensed Program’s which prevents the Licensed Programs from operating substantially in accordance with their documentation and shall further provide such information as may be required by Superion to replicate such errors or defects. Customer agrees to provide dial-in access to Customer’s computer in order for Superion to investigate reported errors or defects. Superion will address any such replicable errors or defects with an effort commensurate with their severity and will deliver to Customer a remedial release or workaround as it becomes available. In the event the problem Customer reported as an error or defect was in fact not in the Licensed Programs, then Customer shall pay Superion, at Superion’s then current list price therefore, for time spent as a result of Customer’s report.
 - 3.2 **Software Upgrades and Updates.** Customer shall receive, at no additional cost, upgrades and updates to the Licensed Programs which are generally made available at no cost by Superion to customers who have purchased Support Services. Customer shall receive one original of any upgrade or update to the Licensed Programs delivered hereunder in electronic form or on media, according to the general form of distribution implemented by Superion. Customer agrees that any upgrades or updates provided by Superion shall be held by Customer upon all of the terms and shall be subject to all of the conditions contained in the license agreement granting Customer the right to use the Licensed Programs.
 - 3.3 **Telephone Support.** Superion shall make available a toll free telephone support line, twenty-four (24) hours a day, seven (7) days per week, for use by Customer’s representatives who shall have received training on the Licensed Programs and who shall be relatively proficient in the operation of the Licensed Programs.
 - 3.4 **Exclusions.** Support Services do not include on-site services nor Licensed Programs that are not at the latest release level or the level immediately prior to the latest release, or for which Customer has not installed all distributed corrective code, or Licensed Programs that have been modified or customized, or that have been damaged by negligence, misuse, use with inappropriate software or equipment or by other external causes.
4. **SUPPORT SERVICES FEES.**
 - 4.1 Support Services Fees for the Initial Term hereof are as provided in Paragraph 1, and are due and payable upon execution of this Agreement.
 - 4.2 Support Services Fees stated herein do not include sales (or equivalent) taxes. Taxes due, if any, will be added to Customer’s invoice.
 - 4.3 Support Services Fees are not refundable in whole or in part, except in the event of Customer’s termination for cause.
5. **WARRANTIES AND REMEDIES.** Superion warrants that the Support Services provided under this Agreement shall be performed professionally, in a workmanlike manner and by employees with appropriate skills and expertise. Except as provided in this paragraph, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, IN THE EVENT SUPERION BREACHES THIS WARRANTY, IS TO TERMINATE THIS AGREEMENT PURSUANT TO THE TERMS OF PARAGRAPH 6 BELOW.

6. **TERMINATION.** This Agreement may be terminated as follows:

6.1 By Superion, if Customer fails to pay Support Services Fees on or before the due date, then this Agreement shall terminate if non-payment continues for more than ten (10) days after receipt of notice in writing from Superion to Customer of such non-payment setting forth the sum then due and how such sum was determined.

6.2 Except as provided in Paragraph 6.2 hereof, by the non-breaching party, in the event this Agreement is breached by a party and that party fails to cure the breach within thirty (30) days after having been given written notice thereof.

6.3 If Customer terminates this Agreement and subsequently desires to reinstate Support Services, Superion's then-current policy with regard to reinstatement shall apply.

7. **GENERAL TERMS. Choice of Law/Dispute Resolution.** This Agreement shall be governed by laws of the State of New Mexico. Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations, then either party may commence legal action against the other. Each party hereto agrees to submit to the personal jurisdiction and venue of the state and/or federal courts in or for Santa Fe, New Mexico for resolution of all disputes in connection with this Agreement.

Binding Agreement. The individual signing this Agreement for Customer warrants that he/she has been duly authorized to bind Customer to all rights, duties, remedies, obligations and responsibilities hereunder and that the Agreement is a valid and binding obligation of Customer.

Assignment. This Agreement and the rights, title, and interest herein, may not be assigned or transferred by Customer without the prior written consent of Superion, which consent may be withheld. Superion may assign its rights, title and interest herein by providing prior written notice to Customer.

Successors Bound. The terms and conditions of this Agreement shall extend and inure to the benefit and be binding on the respective successors and permitted assigns of Customer and Superion.

Force Majeure. Neither party shall be held responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control.

Severability. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Notices. Any notice provided for herein shall be in writing and sent by registered or certified mail, postage prepaid, addressed to the party for which it is intended at the address set forth on the first page of the Agreement or to such other address as either party shall from time to time indicate in writing. Any notice given pursuant to this paragraph shall be deemed given when received or five (5) calendar days from the date of the mailing, whichever occurs first.

Headings. Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms hereof.

Non-Hiring Statement. During the term of this Agreement and for a period of twelve (12) months after the termination of this Agreement, the Customer may not offer to hire or in any way employ or compensate any of the employees of Superion or persons who have been employed by Superion within the immediate past twenty-four (24) months without prior written consent of Superion.

Non-waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

Third Party Product Maintenance. Third party hardware/software maintenance will be provided by the third party hardware and software manufacturer(s). Contractor makes no representations as to expected performance, suitability, or the satisfaction of City's requirements with respect to the hardware or other third party products specified in this Agreement.

Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to Support Services, and there are no representations, conditions, warranties, or collateral agreements, expressed or implied, statutory or otherwise, with respect to this Agreement other than as contained herein. This Agreement supersedes all previous communications, representations or agreements, either written or oral, between the parties. This Agreement may not be modified or supplemented in any way except by written agreement signed by persons authorized to sign agreements on behalf of Customer and of Superion. Preprinted conditions which vary from the terms and conditions herein, and which are contained in any purchase order or other document submitted hereafter by Customer, are of no force or effect.

The parties, each acting with due authority, have executed this Agreement by setting forth their respective signatures:

CITY OF SANTA FE, NM



Authorized Signature

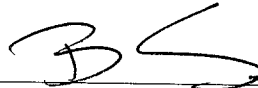
Alan Webber, Mayor

Print Name & Title

Nov. 9, 2018

Date

SUPERION, LLC



Authorized Signature

Brad Surminsky, CFO

Print Name & Title

July 9, 2018

Date

CONTRACT SNFE-2345LG-180034

CITY OF SANTA FE ADDENDUM SUPERION

INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors. Contractor's liability in connection with this agreement shall not exceed the amount paid by City ~~in the twelve (12) months preceding the claim.~~



NEW MEXICO TORT CLAIMS ACT

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

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. City certifies that it has funds appropriated for this agreement and that it will not ask for or accept products or services for which funds have not been appropriated.

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 City and Contractor. 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.

STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES
AND SUBCONTRACTORS

A. Contractor and its agents and employees are independent Contractors performing professional services for the CITY and are not employees of the CITY. CONTRACTOR, and its 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.

B. CONTRACTOR shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor shall comply with CITY's Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. Any merger, acquisition, consolidation, or reorganization involving a party will not be deemed to be an assignment for the purposes of this section.

RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, shall have ninety (90) days to bring any claims under this agreement. After ninety (90) days if contractor has not brought any claims, it releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, Commercial general liability insurance covering

bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount of \$1 million dollars per occurrence and \$2 million dollars aggregate which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is included as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. 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.

RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor 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.

AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in

writing executed by the parties hereto.

NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

CONTRACTOR:
SUPERION, LLC



ALAN WEBBER, MAYOR

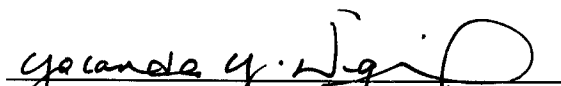


Megan Knight-Jones (Corporate Counsel)

Business Registration 18-00144498

CRS No. 03-377-523-00-0

ATTEST:



YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 10/31/18

APPROVED AS TO FORM:

 10/3

ERIN MCSHERRY, CITY ATTORNEY

APPROVED:



MARY MCCOY, FINANCE DIRECTOR

62252.530710.VARIOUS SUB CODES
62252.510310/520400.various sub codes
Business Unit/Line Item