ITEM # 19-0909

TEKsystems

Staffing Services Agreement

This Staffing Services Agreement ("Agreement") is made November 22, 2019, by and between TEKsystems, Inc. ("TEKsystems"), a Maryland Corporation, and the City of Santa Fe, its parents, subsidiaries and affiliated entities ("Client").

BACKGROUND

WHEREAS, TEKsystems is engaged in the temporary staffing services business providing temporary personnel to customers with staffing needs; and

WHEREAS, Client desires to engage TEKsystems to provide temporary staffing services and TEKsystems desires to be engaged by Client, all on the terms and conditions of this Agreement; and

WHEREAS, as used herein, the term "Contract Employee" means a TEKsystems employee temporarily placed with the Client pursuant to this Agreement;

THEREFORE, in consideration of the premises and mutual promises contained herein, the parties agree as follows:

1. ***TERM***

This Agreement shall commence on the date this Agreement is executed by all parties, and continue for an initial term of one (1) year. This Agreement may be terminated by either party upon thirty (30) days prior written notice.

2. ***CONTRACT EMPLOYEES***

TEKsystems shall provide to Client one or more Contract Employees as requested by Client from time to time. Such Contract Employees shall provide services under Client's management and supervision at a facility or in an environment controlled by Client. Attached hereto as ***Exhibit A*** is a list of the names of the Contract Employee(s) to be placed initially with the Client, standard and overtime hourly billing rates for each Contract Employee, and the starting date for each Contract Employee. Unless otherwise agreed by the parties, this Agreement shall apply to additional Contract Employees provided by TEKsystems as requested by Client hereunder from time to time. Should Client request additional services subsequent to the execution of this Agreement, and such services are not listed on ***Exhibit A*** attached hereto, or should either Client or TEKsystems request changes to hourly billing rates or other terms for any Contract Employee working under the terms of this Agreement, any such additions or changes will be mutually agreed to in writing and executed by the authorized representatives executing this Agreement. Such agreed upon terms shall become a part of this Agreement, as amended.

TEKsystems is an equal opportunity employer and refers Contract Employees, regardless of race, sex, color, religion, creed, ancestry, national origin, disability, age, marital status or other protected class status pursuant to applicable law. Client agrees and warrants that it will not reject Contract Employees, or otherwise deem Contract Employees unacceptable, or take any other action for any reason prohibited by federal, state or local laws including, but not limited to, laws pertaining to employment discrimination or employee safety. In addition, Client agrees to require all Contract Employees to record all hours worked and will not allow "off the clock" time or other similar arrangements. **California Only**: Client will also ensure that Contract Employees are afforded the opportunity to take all required rest breaks and meal periods as required by law, and to properly document those rest and meal breaks.

3. ***INDEPENDENT CONTRACTOR STATUS***

With respect to the services provided by TEKsystems, TEKsystems shall be an independent contractor. TEKsystems shall be responsible for providing any salary or other benefits to such Contract Employees; will make all appropriate tax, social security, Medicare and other withholding deductions and payments; will provide worker's compensation insurance coverage for its Contract Employees; and will make all appropriate unemployment tax payments.

4. ***INVOICING***

4.1 ***Invoices:*** TEKsystems shall submit weekly invoices to Client for services rendered by Contract Employee(s) for the number of hours worked by Contract Employee(s) the previous week. Overtime will be billed at the rates listed on ***Exhibit A***, or as otherwise agreed by both parties, for hours worked by Contract Employee(s) in excess of forty (40) hours per week, or as otherwise required by law. For weeks that have one (1) National or Client observed holiday, overtime rates shall be billed for hours worked in excess of thirty-two (32) hours per agrees that TEKsystems may engage sub-contractors to provide services hereunder as it deems necessary.

8. ***EXPORT CONTROL***

Client agrees that it will adhere to all applicable export controls including but not limited to the International Traffic and Arms Regulations (ITAR), the Export Administration Regulations (EAR), and all regulations and orders administered by the Office of Foreign Asset Control of the U.S. Department of Treasury. Client further assumes responsibility for contract employees' actions with regard to any transfer of export controlled articles to include technical data, and defense services while acting within the scope of work under this contract, to include the procurement of any licenses required under the ITAR or EAR. Client is responsible for identifying in writing for TEKsystems positions that require access to export controlled data or require TEKsystems provided personnel to participate in the export of controlled information and technologies to foreign persons. TEKsystems agrees to certify that its employees placed in those positions are U.S. persons where necessary.

9. ***PREVAILING WAGE***

Client agrees that it is Client's responsibility to notify TEKsystems of any prevailing wage or other wage requirements covering the Contract Employees assigned to perform services for the Client, and Client hereby certifies that the services to be performed by the Contract Employees under this Agreement are not subject to any such wage requirements. In the event that it is later determined that any prevailing wage or other wage requirements/determinations are applicable, Client shall be responsible for notifying TEKsystems of the proper job classification as it relates to the Contract Employees as set forth in the Exhibit A to this agreement.

10. ***RESTRICTIVE COVENANTCONVERSION / RIGHT TO HIRE***

10.1 ***Restrictive Covenant-Conversion***:

(a) TEKsystems is not an employment agency. Its services are provided at great expense to TEKsystems. In consideration thereof, during the term of this Agreement and for the one hundred eighty (180) day period immediately following the period for which a Contract Employee last performed services for the Client under this Agreement, Client shall not, directly or indirectly, for itself, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, member, officer, director, sole proprietor, or otherwise, solicit, participate in or promote the solicitation of such Contract Employee to leave the employ of TEKsystems, or hire or engage such Contract Employee.

Notwithstanding the above paragraph in this *Section 10.1*, if at any time the Client wishes to hire any Contract Employee provided by TEKsystems, Client may request that TEKsystems release the Contract Employee from his/her employment contract with TEKsystems to allow Client to employ or engage the services of Contract Employee, either directly or indirectly. Client acknowledges and agrees that TEKsystems, in its sole and absolute discretion, has the right to accept or refuse Client's request to employ or engage the services of Contract Employee supplied by TEKsystems to Client.

10.2 ***Submittals-Right To Hire***: Resumes submitted to Client are confidential and for Client use only. Client agrees that TEKsystems is the representative of all candidates for which resumes are submitted to Client by TEKsystems in response to Client requests.

11. ***CONTRACT EMPLOYEE PERFORMANCE***

Within the first forty (40) hours worked by any Contract Employee(s), Client shall review the Contract Employee(s) performance and decide whether to continue the engagement of such Contract Employee. If Client is dissatisfied with the performance of the Contract Employee, and Client wishes TEKsystems to terminate its engagement of such Contract Employee, Client must notify TEKsystems within the initial forty (40) hour period, specifying the reasons for its dissatisfaction, and Client shall not be required to pay for the hours worked by that Contract Employee during the initial forty (40) hour period, provided its reasons for termination are not unlawful and are bona fide in TEKsystems' reasonable judgment. If Client becomes dissatisfied with the performance of a Contract Employee after the initial forty (40) hour period, Client may request that TEKsystems terminate the engagement of that Contract Employee upon written notice to TEKsystems, but Client shall pay for all hours worked by the terminated Contract Employee from the first hour of work up to and including the date of termination.

12. ***LIMITATION OF LIABILITY***

TEKsystems does not warrant or guarantee that the Contract Employee(s) placed pursuant to this Agreement will produce any particular result or any solution to Client's particular needs. Accordingly, Client acknowledges and agrees that TEKsystems is not responsible for any aspects of the Contract Employees work or the Client's project, including, without limitation, any deadlines or work product. Because TEKsystems is providing supplemental staffing services only, and Client is directing and supervising the Contract Employees who render these services, TEKsystems shall not be liable (i) for any claims, costs, expenses, damages, obligations or losses arising from or in connection with the acts or omission of any Contract Employee, including, but not limited to, work on engineering or design concepts or calculations or related drawings, software programs, designs or documentation, or (ii) for any indirect, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) whether arising in contract.

unit, subsidiary or affiliate of TEKsystems. Except as otherwise specifically provided, this Agreement is not intended and shall not be construed to confer upon or to give any person, other than the parties hereto, any rights or remedies.

15.6 ***Amendments And Modifications***: This Agreement, including *Exhibit A* and *Exhibit B* hereto, may be amended, waived, changed, modified or discharged only by an agreement in writing signed on behalf of all of the parties by the authorized representatives executing this Agreement.

15.7 ***Entire Agreement***: This Agreement, *Exhibit A* and *Exhibit B* hereto constitutes the entire agreement between the parties, and there are no representations, warranties, covenants or obligations except as set forth in this Agreement. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties, relating to any transaction contemplated by this Agreement.

15.8 ***Waiver***: Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of that term, covenant or condition or of any other term, covenant or condition of this Agreement. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.

15.9 ***Remedies Cumulative***: The remedies set forth in this Agreement are cumulative and are in addition to any other remedies allowed at law or in equity. Resort to one form of remedy shall not constitute a waiver of alternate remedies.

15.10 ***Assignment***: No party shall transfer or assign any or all of its rights or interests under this Agreement or delegate any of its obligations without the prior written consent of the other party; provided, however, that TEKsystems may transfer or assign its rights or interests, or delegate its obligations, under this Agreement to any of TEKsystems other divisions, business units, subsidiaries or affiliates without the prior written consent of Client.

16. ***HEALTH AND SAFETY***

Client agrees to train, certify, evaluate and orient all TEKsystems Contract Employees in all safety (IIPP), hazardous communication (MSDS information, etc.) and operational instructions in the same manner as Client employees and as required by policy or by law, including, but not limited to, all federal OSHA and equivalent state agency requirements, guidelines and standards. Client will provide and require all TEKsystems Contract Employees to wear all appropriate safety equipment. Client will notify TEKsystems immediately in the event of an accident or medical treatment of any TEKsystems Contract Employee, and will be provided with a completed supervisor's report of injury. In the event of an accident or other incident involving a TEKsystems Contract Employee, TEKsystems shall have the right to conduct an on-site investigation. Client shall cooperate with TEKsystems in the conduct of its investigation.

17. ***VEHICLE USE***

Contract Employee(s) are not authorized to operate a motor vehicle without TEKsystems' express written permission. Client shall not request or require TEKsystems' Contract Employee(s) to perform tasks that require driving a motor vehicle without TEKsystem's express written permission.

18. ***FORCE MAJEURE***

Neither party shall be liable for any delay in delivery or nonperformance in whole of its obligations under this Agreement or Statement of Work if prevented from doing so by a cause or causes beyond its control, including, without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the non-performing party shall use reasonable efforts to remedy its inability to perform.

19. ***TERM AND EFFECTIVE DATE***

This Agreement shall be effective when signed by the Client and the TEKsystems, whichever occurs last, and shall terminate on unless sooner pursuant to the Termination Article below. The term of this Agreement may be extended for an additional period of three (3) years, not to exceed four (4) years, by a written amendment in accordance with the terms of this Agreement.

19.1 ***Termination;*** This Agreement may be terminated by the Client upon 30 days written notice to the TEKsystems.

20. ***INDEMNIFICATION***

TEKsystems shall indemnify, hold harmless and defend the CLIENT 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 TEKsystems' negligent acts or omissions in furtherance of the services provided under this Agreement as well as the performance of TEKsystems' employees, agents, representatives and subcontractor.

21. ***NEW MEXICO TORT CLAIMS ACT***

Any liability incurred by the CLIENT 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 CLIENT 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.

22. ***APPLICABLE LAW; CHOICE OF LAW; VENUE***

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

23. ***APPROPRIATIONS***

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

24. ***RELEASE***

TEKsystems, upon acceptance of final payment of the amount due under this Agreement, releases the CLIENT, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. TEKsystems agrees not to purport to bind the CLIENT to any obligation not assumed herein by the CLIENT unless TEKsystems has express written authority to do so, and then only within the strict limits of that authority.

25. ***INSURANCE***

TEKsystems 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. TEKsystems shall furnish the CLIENT with proof of insurance of TEKsystems's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

26. ***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 CLIENT and the TEKsystems. 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.

27. ***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, under seal, the day and year first above written.

TEKsystems, Inc.

Signature

Sam Dickey Sam Dickey

Name

Sales Mgr 12-4-19 12-6-19

Title Date

Attest:

Yolanda Y. Vigil, City Clerk

Approved as to Form:

Erin K. McSherry, City Attorney

Client

Signature

Name

Title Date

Approved:

Mary McCoy, Finance Director

TEKsystems

EXHIBIT A

Pursuant to the terms and conditions of the Staffing Services Agreement ("Agreement") dated November 22,2019 by and between TEKsystems, Inc. ("TEKsystems") and City of Santa Fe ("Client"), Client agrees to reimburse TEKsystems in full at the following approved rates:

Contract Employee Name	Standard Billing Rate	Overtime Billing Rate	Scheduled Start Date	Prevailing Wage Required
Balwanth Gudoor	$ 72.00 /hr	$ 72.00 /hr	12/18/2019	
	$ /hr	$ /hr		
	$ /hr	$ /hr		
	$ /hr	$ /hr		
	$ /hr	$ /hr		
	$ /hr	$ /hr		

AGREED AND ACCEPTED:

TEKsystems, Inc.

Sam Dickey
Signature

Sam Dickey
Name

Sales Manager 12-4-19
Title Date

Sale Mgr 12-6-19

Client

See Attached
Signature

Name

Title Date

Database Administrator

Provides technical expertise in the use of flat file and Database Management Systems (DBMS)/ Relational Database Management Systems (RDMS). Evaluates and recommends available DBMS or products to customer requirements. Defines organization and indexing methods for specific application databases. Works closely with customer security specialists to define required security procedures for backup and recovery and to control access to the data. Monitors and fine-tunes databases performance.

Hourly Rate x Hours + GRT = Total Price

$72 x 740 hours =$53,280 x 8.4375% ($4,495.50)= $57,775

TEKsystems

EXHIBIT A

Pursuant to the terms and conditions of the Staffing Services Agreement ("Agreement") dated November 22,2019 by and between TEKsystems, Inc. ("TEKsystems") and City of Santa Fe ("Client"), Client agrees to reimburse TEKsystems in full at the following approved rates:

Contract Employee Name	Standard Billing Rate	Overtime Billing Rate	Scheduled Start Date	Prevailing Wage Required
Balwanth Gudoor	$ 72.00 /hr	$ 72.00 /hr	12/18/2019	
	$ /hr	$ /hr		
	$ /hr	$ /hr		
	$ /hr	$ /hr		
	$ /hr	$ /hr		
	$ /hr	$ /hr		

AGREED AND ACCEPTED:

TEKsystems, Inc.

Signature

Sam Dickey

Name

Sales Manager 12-4-19

Title Date

Client

Signature Jarel LaPan Hill

Interim City Manager

Name

12/6/19

Title Date

Database Administrator

Provides technical expertise in the use of flat file and Database Management Systems (DBMS)/ Relational Database Management Systems (RDMS). Evaluates and recommends available DBMS or products to customer requirements. Defines organization and indexing methods for specific application databases. Works closely with customer security specialists to define required security procedures for backup and recovery and to control access to the data. Monitors and fine-tunes databases performance.

Hourly Rate x Hours + GRT = Total Price

$72 x 740 hours =$53,280 x 8.4375% ($4,495.50)= $57,775

No Expenses Approved At This Time

EXHIBIT B

Pursuant to the terms and conditions of the Staffing Services Agreement ("Agreement") dated [ddd] by and between TEKsystems, Inc. ("TEKsystems") and ("Client"), Client agrees to reimburse TEKsystems in full and at the approved rates for the following marked expenses:

Specifications/Comments

☐ Mileage ☐ Rate per mile $______ ____________

☐ Parking ____________

☐ Tolls ____________

☐ Meal allowance per day $______ ____________

☐ Per Diem: Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act

☐ Weekly $______ ____________

☐ Daily $______ ____________

☐ Travel Hours ____________

☐ Hotel ____________

☐ Airfare ____________

☐ Misc. expenses ____________

☐ Tools (to complete job) ____________

☐ Supplies (to complete job) ____________

☐ Other (to complete job) ____________

☐ Rental car ☐ Weekly $______ ____________

☐ Daily $______ ____________

☐ Other ____________

AGREED AND ACCEPTED:

TEKsystems, Inc.	**Client**
Signature	Signature
Name	Name
Title Date	Title Date