

**CITY OF SANTA FE
AMENDMENT No. 2 (two) TO
PROFESSIONAL SERVICES AGREEMENT
ITEM#19-0890**

This AMENDMENT No. 2 (two) (the "Amendment") amends the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated November 19, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and REDW LLC. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide services to examine internal controls under Institute of Internal Auditors (IIA) Standards for the City of Santa Fe.

B. Pursuant to Article 13 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to increase the amount of compensation by a total of one hundred fifty thousand dollars and zero cents (\$150,000.00), including applicable gross receipts taxes for fiscal year twenty-two (FY 22) July 1, 2021 thru June 30, 2022, so that Article 2, paragraph A reads in its entirety as follows:

A. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed three hundred fifty thousand dollars and zero cents (\$350,000.00). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Amendment no. 2 to the Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:
REDW LLC

AWM

ALAN WEBBER, MAYOR

Jessica Bundy Principal
Jessica Bundy, Principal

DATE: Aug 18, 2021

DATE: 9/17/21
CRS# _____

Registration # 19-00128440

ATTEST:

Kristine Mihelcic

Kristine Mihelcic (Aug 20, 2021 15:47 MDT)

KRISTINE BUSTOS- MIHELICIC, CITY CLERK *JM*

GB MTG 08/11/2021

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Jul 3, 2021 09:27 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR or DESIGNEE

1002650.510330

Org. Name/Org. #

**CITY OF SANTA FE
AMENDMENT No. 1 (one) TO
PROFESSIONAL SERVICES AGREEMENT
ITEM# 19-0890**

This AMENDMENT No. 1 (ONE) (the "Amendment") amends the CITY OF SANTA FE PROFESSIONAL SERVICE AGREEMENT, dated November 19, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and REDW LLC. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

1) A. Under the terms of the Agreement, Contractor has agreed to provide services to examine internal controls under Institute of Internal Auditors (IIA) Standards for the City of Santa Fe.

2) B. Pursuant to Article 13. of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SCOPE OF SERVICES

Article 1 A., paragraph d. of the Agreement is amended, so that Article 1 A., paragraph d. reads as follows:

A. The Contractor shall perform the following work:

1. Examine internal controls under Institute of Internal Auditors (IIA) Standards for the following areas:
 - d. Other Internal Audits to be performed in FY 21 as deemed necessary.

All other Scope of Work within the Contract remains the same.

2. COMPENSATION.

Article 2, paragraph A. of the Agreement is amended to increase the amount of compensation by ninety-seven thousand dollars (\$97,000), so that Article 2, paragraph A reads in its entirety as follows:

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rates listed below, and compensation not to exceed two hundred thousand dollars (\$200,000), inclusive of gross receipt tax.

- 1) Leases for the City, either as Lessor or Lessee (250 hours at \$150 per hour for a total of \$37,500).
- 2) Contract and Vendor Management (160 hours at \$150 per hour for a total of \$24,000).
- 3) Human Resources (160 hours at \$150 per hour for a total of \$24,000).
- 4) Any expanded testing procedures based on initial observations and specific risk identification during internal audits. (40 hours @\$150 per hour totals \$6,000 per audit).

The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed two hundred thousand dollars (\$200,000).

This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

3. TERM:

Article 3 of the Agreement is hereby deleted in its entirety and substitute the following Article 3 in its place:

This Agreement shall be effective July 1, 2020 and shall terminate on June 30, 2023 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 (ONE) to the Agreement as of the date set forth above.

CITY OF SANTA FE:

CONTRACTOR: REDW LLC

Jarel LaPan Hill
Jarel LaPan Hill (Nov 10, 2020 16:41 MST)

JAREL LAPAN HILL, CITY MANAGER

DATE: Nov 10, 2020

Jessica Bundy

Contractor Signature

Jessica Bundy Principal

PRINT NAME and TITLE

DATE: Oct 1, 2020

CRS# _____

Registration # 19-00128440

ATTEST:

Yolanda Y. Vigil

YOLANDA Y. VIGIL, CITY CLERK

YV
XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Sep 30, 2020 13:02 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

Org. Name/Org.#

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

1) Examine internal controls under Institute of Internal Auditors (IIA) Standards for the following areas:

a. Leases for the City of Santa Fe, either as a Lessor or Lessee. Test for existence, valuation, compliance, accuracy and completeness, internal controls overseeing Leases, who created the lease, who is collecting the rent, who is submitting expenses for reimbursement, who is using the leased property, who is responsible for improvements and repairs and maintenance, are these being performed, who is performing the work, who is paying for the work performed, is the lease being performed and complied to as written.

b. Contract and Vendor Management. Test contracts and vendors for existence, valuation, accuracy, compliance and completeness, internal controls overseeing contract and vendor management, contract terms, services rendered, payments made in relation to services provided, who create a contract and their relation to the contractor. Review a sample of high-risk contracts citywide to determine if contract work is performed according to contract terms. For examples, test work may focus on reviewing to see if work is verified complete before invoices are paid.

c. Human Resources— Review of HR controls, focusing on the City's hiring and onboarding policies and practices.

d. Other Internal Audits to be performed in FY20 as deemed necessary.

2) The internal auditor will adhere to the Institute of Internal Auditors' guidance including the International Standards for the Professional Practice of Internal Auditing and Code of Ethics. The Institute of Internal Auditors' Practice Advisories, Practice Guides, and Position Papers will also be adhered to as guidance, as well as, City of Santa Fe relevant policies. The Internal Audit product shall adhere to IIA's five audit scope standards listed below which outline the internal auditor's responsibilities.

- 3) Review the reliability and integrity of operating and financial information and how it is identified, measured, classified and reported.
- 4) Determine if the systems designed to comply with these policies, plans, procedures, taxes and regulations are being followed.
- 5) Review how assets are safeguarded and verify their existence.
- 6) Examine City resources to determine how effectively and efficiently they are used.
- 7) Review operations and programs to determine if they are being carried out as planned and if they are meeting their objectives.
- 8) The Contractor will provide in-person reports and information directly to the Audit Committee on a quarterly basis. Such information and reports will include, but are not limited to, the following:

- a. Progress reports of Internal Audits completed and in progress, as compared to the plan (including budgeted hours).

- b. At the completion of any Internal Audit, a written report, reflecting all results of agreed-upon procedures. The report should include an overall summary with a background and scope statement, and the results of the Internal Audit, reflecting each detailed observation or finding and recommendations. The contractor will meet with the City to review its findings, conclusions and recommendations. The City will provide written responses which the contractor shall incorporate into the final Internal Audit report. Each Internal Audit report shall include all instances of non-compliance with policies, procedures, contract terms, etc. Report preparation, editing and printing shall be the responsibility of the contractor.

- c. The Contractor will be required to bring to the attention of the City, immediately upon discovery, any instances of material misstatement, internal control weaknesses or suspected fraud, irregularities, illegal acts, collusion, manipulation or kickbacks.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rates listed below, and compensation not to exceed one hundred and three thousand dollars (\$103,000), excluding gross receipts tax:

- 1) Leases for the City, either as Lessor or Lessee (250 hours at \$150 per hour for a total of \$37,500).
- 2) Contract and Vendor Management (160 hours at \$150 per hour for a total of \$24,000).
- 3) Human Resources (160 hours at \$150 per hour for a total of \$24,000).
- 4) Any expanded testing procedures based on initial observations and specific risk identification during internal audits. (40 hours @\$150 per hour totals \$6,000 per audit).

The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall not exceed (\$8,732.81) shall be paid by the City to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$112,232.81).

This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on June 30, 2020 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall

submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

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

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve

the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

9. Release.

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

10. Confidentiality.

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

11. Product of Service – Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

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

13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

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

20. **Records and Financial Audit.**

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

21. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City and the Risk Management Division of the New Mexico General Services Department by certified mail.

22. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe 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.

23. **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.

24. **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.

25. Notices.

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

To the City:

City Attorney, City of Santa Fe, PO Box 909, Santa Fe, NM 87504-0909

To the Contractor:

Jessica Bundy, REDW, INC., 7425 Jefferson St NE, Albuquerque, NM 87109

26. Authority.

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

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

CITY OF SANTA FE:


ALAN WEBBER, MAYOR

DATE: 11/19/2019

CONTRACTOR:

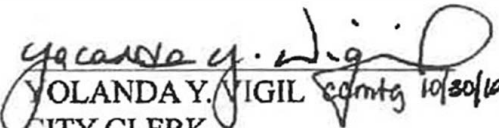
REDW, INC.


NAME AND TITLE

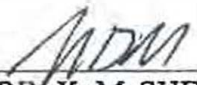
DATE: 11/19/19
CRS# _____

Registration # 19-00128440

ATTEST:


YOLANDA Y. VIGIL *comtg 10/30/19*
CITY CLERK

APPROVED AS TO FORM:

 9/13/19
ERIN K. McSHERRY, CITY ATTORNEY

APPROVED:


MARY McCOY FINANCE DIRECTOR

1002650.510330
Business Unit Line Item