

Date of Issuance: 8/16/21	Effective Date: 8/16/21
Owner: City of Santa Fe, NM	Owner's Contract No.: CIP #957
Contractor: RMCI, Inc.	Contractor's Project No.: 2006
Engineer: Carollo Engineers, Inc.	Engineer's Project No.: 11283A.20
Project: Paseo Real Wastewater Treatment Plant – Aeration Improvements	Contract Name: Paseo Real Wastewater Treatment Plant – Aeration Improvements



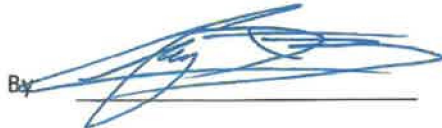
The Contract is modified as follows upon execution of this Change Order:

- |  |                           |
|--|---------------------------|
| 1. COP No. 23 - Extensions to Existing Concrete Pads to Accommodate New Blowers .....          | \$5,314.42                |
| 2. COP No. 24 – Temporary Aeration Basin Blower System .....                                   | \$270,853.20              |
| 3. COP No. 25 – Installation of Mixers in Pass B – South Aeration Basin .....                  | \$28,895.67               |
| 4. COP No. 26 – Insulation for Piping at the EQ Tank Pump Station .....                        | \$34,024.53               |
| 5. COP No. 27 – Additional General Conditions Costs – Turblex Blower Building Work Delay ..... | \$68,466.76               |
| 6. COP No. 28 – Blower Piping Pipe Support Revisions .....                                     | \$ 8,501.52               |
| 7. New Mexico Gross Receipts Tax @ 8.4375% .....   | <u>\$35,104.73</u>        |
|  | <b>TOTAL \$451,160.83</b> |

Attachments: *Change Order No. 3 Justification Summary with RMCI Pricing Attachments.*

<b>CHANGE IN CONTRACT PRICE</b>	<b>CHANGE IN CONTRACT TIMES</b>
Original Contract Price:  <u>\$ 11,661,233.20 (Inclusive of NMGR)</u>	Original Contract Times:  <u>481 Calendar Days</u>
<u>Increase</u> from previously approved Change Orders  <u>\$ 1,045,414.71 (Inclusive of NMGR)</u>	<u>Increase</u> from previously approved Change Orders  <u>65 Calendar Days</u>
Contract Price prior to this Change Order:  <u>\$ 12,706,647.91 (Inclusive of NMGR)</u>	Contract Times prior to this Change Order:  <u>546 Calendar Days</u>
<u>Increase</u> of this Change Order:  <u>\$ 451,160.83 (Inclusive of NMGR)</u>	<u>Increase</u> of this Change Order:  <u>64 Calendar Days</u>

Contract Price incorporating this Change Order:  <u>\$ 13,157,808.74 (Inclusive of NMGRT)</u>	Contract Times with all approved Change Orders:  <u>610 Calendar Days</u>
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RECOMMENDED:	ACCEPTED:	ACCEPTED:
By:  _____ Carollo Engineers, Inc.	By:  _____ City of Santa Fe, NM	By:  _____ RMCI, Inc.
Title <u>Senior Client Services Manager</u>	Title <u>Mayor</u>	Title <u>President/CEO</u>
Date <u>August 24, 2021</u>	Date <u>Apr 20, 2022</u>	Date <u>8-23-21</u>



CITY OF SANTA FE:



ALAN WEBBER, MAYOR

DATE: Apr 20, 2022

ATTEST:



KRISTINE BUSTOS MIHELICIC, CITY CLERK   
GB MTG 04/13/2022

APPROVED AS TO FORM:



SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



MARY MCCOY, FINANCE DIRECTOR

<b>Date of Issuance:</b> 6/8/21	<b>Effective Date:</b> 6/8/21	
<b>Owner:</b> City of Santa Fe, NM	<b>Owner's Contract No.:</b> CIP #957	
<b>Contractor:</b> RMCI, Inc.	<b>Contractor's Project No.:</b> 2006	
<b>Engineer:</b> Carollo Engineers, Inc.	<b>Engineer's Project No.:</b> 11283A.20	
<b>Project:</b> Paseo Real Wastewater Treatment Plant – Aeration Improvements	<b>Contract Name:</b> Paseo Real Wastewater Treatment Plant – Aeration Improvements	




The Contract is modified as follows upon execution of this Change Order:

1. COP No. 1 – Blower Outlet Piping Revisions .....	\$56,392.43
2. COP No. 13 – Upsizing of Conductors for Mixer 22-01-28 .....	\$408.09
3. COP No. 14 - Removal of Sludge from North Aeration Basin – (March 4 <sup>th</sup> Spill).....	\$71,250.00
4. COP No. 15 – Removal of Sludge from North Aeration Basin – (March 17 <sup>th</sup> Spill) .....	\$3,750.00
5. COP No. 16 – Revisions to Existing Blower Building PLC Panel .....	\$8,997.04
6. COP No. 17 – Trench Drain Credit .....	\$ (7,176.24)
7. COP No. 18 – Replacement of Aeration Basins Process Analyzers .....	\$128,548.30
8. COP No. 19 – VFD Conduit Routing Revisions – WAS Pumps .....	\$11,400.69
9. COP No. 20 – DAF Building Actuated Valves and Flow Meter Locations Electrical Work .....	\$25,983.24
10. COP No. 21 – DAF Building Actuated Valves and Flow Meter Locations Mechanical Work.....	\$5,966.15
11. COP No. 22 – Additional Pump Required for By-pass Pumping – South Aeration Basin .....	\$10,890.82
12. Additional Sludge Hauling (963 CY) – South Aeration Basin .....	\$361,125.00
13. Increase Bid Allowance for Material Testing .....	\$15,000.00
14. New Mexico Gross Receipts Tax @ 8.4375% .....	\$58,432.68
<b>TOTAL</b>	<b>\$750,968.20</b>

Attachments: *Change Order No. 2 Justification Summary with RMCI Pricing Attachments.*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price:  \$ <u>11,661,233.20</u> (Inclusive of NMGR)	Original Contract Times:  <u>481 Calendar Days</u>
<u>Increase</u> from previously approved Change Orders  \$ <u>294,446.51</u> (Inclusive of NMGR)	<u>Increase</u> from previously approved Change Orders  <u>52 Calendar Days</u>
Contract Price prior to this Change Order:  \$ <u>11,955,679.71</u> (Inclusive of NMGR)	Contract Times prior to this Change Order:  <u>533 Calendar Days</u>

<u>Increase of this Change Order:</u>	<u>Increase of this Change Order:</u>
<u>\$ 750,968.20 (Inclusive of NMGR)</u>	<u>13 Calendar Days</u>
<u>Contract Price incorporating this Change Order:</u>	<u>Contract Times with all approved Change Orders:</u>
<u>\$ 12,706,647.91 (Inclusive of NMGR)</u>	<u>546 Calendar Days</u>

<b>RECOMMENDED:</b>	<b>ACCEPTED:</b>	<b>ACCEPTED:</b>
By: 	By: 	By: 
Carollo Engineers, Inc.	City of Santa Fe, NM	RMCI, Inc.
Title <u>Senior Client Service Manager</u>	Title <u>Mayor</u>	Title <u>President/CEO</u>
Date <u>July 1, 2021</u>	Date <u>Sep 30, 2021</u>	Date <u>7/1/21</u>

CITY OF SANTA FE:



ALAN WEBBER, MAYOR

DATE: Sep 30, 2021

ATTEST:



KRISTINE BUSTOS MIHELICIC, CITY CLERK   
GB MTG 09/29/2021

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Aug 12, 2021 15:42 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



MARY MCCOY, FINANCE DIRECTOR

Date of Issuance:	3/31/201	Effective Date:	3/31/21
Owner:	City of Santa Fe, NM	Owner's Contract No.:	CIP #957
Contractor:	RMCI, Inc.	Contractor's Project No.:	2006
Engineer:	Carollo Engineers, Inc.	Engineer's Project No.:	11283A.20
Project:	Paseo Real Wastewater Treatment Plant – Aeration Improvements	Contract Name:	Paseo Real Wastewater Treatment Plant – Aeration Improvements




The Contract is modified as follows upon execution of this Change Order:

- |   |                    |
|---|--------------------|
| 1. Modifications to Specification Section 01140 – Work Restrictions.....                  | No Cost            |
| 2. Additional Sludge Hauling – North Aeration Basin.....                                  | \$80,625.00        |
| 3. COP No. 2 - Revise Model of Centrate Pumps to Match Digester Pumps .....               | \$11,994.77        |
| 4. COP No. 3 - Revisions to Electrically Actuated Valve Schedule .....                    | \$ 6,186.07        |
| 5. COP No. 4 – Revise EQ Tank Sump Pump from Duplex to Simplex .....                      | \$(27,450.80)      |
| 6. COP No. 5 – Provide Remote Transmitters for Thermal Mass Flow Meters .....             | \$34,445.90        |
| 7. COP No. 6 – Upsize Misc. Electrical Conduits in Ductbanks .....                        | \$11,538.16        |
| 8. COP No. 8 – Additional Pumps Required for By-pass Pumping – North Aeration Basin ..... | \$60,900.98        |
| 9. COP No. 9 – Modifications to Scum Trough Discharge Piping .....                        | \$ 477.14          |
| 10. COP No. 10 – Concrete Equipment Pad for LCP-220 .....                                 | \$ 2,583.79        |
| 11. COP No. 11 – Replacement of Existing Aeration Basins Air Piping Supports .....        | \$84,901.97        |
| 12. COP No. 12 – Clean Existing Diffuser Grid Piping – North Basin, Pass A-2 .....        | \$ 5,332.71        |
| 13. New Mexico Gross Receipts Tax @ 8.4375% .....   | <u>\$22,910.82</u> |
|   | TOTAL \$294,446.51 |

Attachments: *Change Order No. 1 Justification Summary with RMCI Pricing Attachments.*



CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price:  \$ <u>11,661,233.20</u> (Inclusive of NMGRT)	Original Contract Times:  <u>481 Calendar Days</u>
<u>Increase</u> from previously approved Change Orders  \$ <u>N/A</u>	<u>Increase</u> from previously approved Change Orders  <u>N/A</u>
Contract Price prior to this Change Order:  \$ <u>11,661,233.20</u> (Inclusive of NMGRT)	Contract Times prior to this Change Order:  <u>481 Calendar Days</u>

<u>Increase of this Change Order:</u>	<u>Increase of this Change Order:</u>
<u>\$ 294,446.51 (Inclusive of NMGR)</u>	<u>52 Calendar Days</u>
<u>Contract Price incorporating this Change Order:</u>	<u>Contract Times with all approved Change Orders:</u>
<u>\$ 11,955,679.71 (Inclusive of NMGR)</u>	<u>533 Calendar Days</u>

<b>RECOMMENDED:</b>	<b>ACCEPTED:</b>	<b>ACCEPTED:</b>
By: 	By: 	By: 
Carollo Engineers, Inc.	City of Santa Fe, NM	RMCI, Inc.
Title <u>Senior Client Service Manager</u>	Title <u>MAYOR</u>	Title <u>President/CEO</u>
Date <u>April 31, 2021</u>	Date <u>May 28, 2021</u>	Date <u>3-31-21</u>

ATTEST:  
  
 KRISTINE BUSTOS MIHELICIC, CITY CLERK   
 GB MTG 05/26/2021

CITY ATTORNEY'S OFFICE:  
  
 Marcos Martinez (Apr 20, 2021 14:41 MDT)  
 SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:  
  
 Alexis Lotero, Acting Finance Director (Apr 30, 2021 17:04 MDT)  
 MARY MCCOY, FINANCE DIRECTOR  
 5000375.572970   
 AJH

CITY OF SANTA FE

CONSTRUCTION/ENGINEERING 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 RMCI, Inc., 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) Construction services to upgrade the wastewater aeration system at the Paseo Real Wastewater Treatment Plant. The contractor shall provide services to install pre-furnished equipment and those furnished by the Contractor as specified in the plan drawings and specifications.

2) The aeration improvements associated with the above mentioned construction work are, but not limited to, work within the facility buildings, aeration diffusers, laterals, headers, control valves, blowers, variable frequency drives, airflow meters, construction of an equalization tank, HVAC, SCADA interfacing equipment for upgraded aeration processes and existing process analyzers, electrical system and controls, wiring, system controls and equipment, internal and external (yard) piping, utility extensions (Electrical Power/Auxiliary Power), scum removal system (selectors and aeration basins) replacement, upgrades to plant drain, piping, controls, and instrumentation.

3) Construction work for this project will need to meet specific milestone dates to ensure permit requirements can be met into 2021.

4) The construction services shall be scheduled and coordinated with City staff so the work during the project does not interrupt the City's ability to meet its current permit requirements as one aeration basin will be placed out of service at a time for construction work to be performed within the two basins.

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1) Implement the design of the improvements, as described in the Plans and Specifications for the project, the Contractor will provide improvements to the Paseo Real facilities that will assure the efficient and effective operation of the Paseo Real biological treatment process, in compliance will the facilities standard operating procedures, and meet applicable discharge permit requirements.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed and amount not to exceed ten million seven hundred fifty three thousand eight hundred seventy five dollars (\$10,753,875), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling nine hundred seven thousand

three hundred fifty eight dollars and twenty cents (\$907,358.20) 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 eleven million six hundred sixty one thousand two hundred thirty three dollars and twenty cents (\$11,661,233.20). 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 CITY. This agreement shall begin on date approved by the City, and end on June 30, 2024. 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.

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 City 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 City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, 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 City. The 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. 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 City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **Construction Contract Performance and Payment Bond.**

A. When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

(1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

8. **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.

9. **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.

10. **Release.**

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

11. **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.

12. **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.

**13. 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.

**14. 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.

**15. Change Orders.**

A. **Changes.** The Contractor may only make changes or revisions within the Scope of Work as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in the Scope of Work;
2. Due date of any Deliverable, as outlined in the Scope of Work;
3. Compensation of any Deliverable, as outlined in the Scope of Work;
4. Agreement compensation, as outlined in Article 2; or
5. Agreement termination, as outlined in Article 4.

B. **Change Request Process.** In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1) The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:

- (a) the name of the person requesting the change;
- (b) a summary of the required change;
- (c) the start date for the change;
- (d) the reason and necessity for change;
- (e) the elements to be altered; and
- (f) the impact of the change.

2) The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

**16. 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.

**17. 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.

**18. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, 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.

**19. 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.

**20. 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.

**21. 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.

**22. Other 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. Required Insurance:**

Contractors required insurance as described in Exhibit A attached hereto and incorporated within.

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

**C. 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.

**D. 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.**

**23. 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

**24. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceedings, 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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:

City of Santa Fe:  
Waste Water Division Director  
Waste Water Management Division  
73 Paseo Real  
Santa Fe, NM 87507

To the Contractor:  
RMCI, Inc.  
6211 Chappell Road NE  
Albuquerque, NM 87113

29. **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.

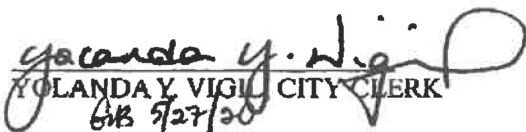
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

  
ALAN WEBBER, MAYOR

DATE: 6/1/2020

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK  
6/1/20

CITY ATTORNEY'S OFFICE:

  
SENIOR ASSISTANT CITY ATTORNEY  
4/16/20

APPROVED FOR FINANCES:

  
MARY MCCOY, FINANCE DIRECTOR  
5000375.572976

CONTRACTOR:

RMCI, Inc.

See Attached  
NAME

TITLE

DATE:

CRS#02-157665-003

Registration # 19-00110047

City of Santa Fe:  
Waste Water Division Director  
Waste Water Management Division  
73 Paseo Real  
Santa Fe, NM 87507

To the Contractor:  
RMCI, Inc.  
6211 Chappell Road NE  
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CITY OF SANTA FE:

  
ALAN WEBBER, MAYOR

DATE: 6/1/2020

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK  
6/3 9/27/20

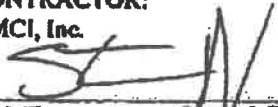
CITY ATTORNEY'S OFFICE:

 4/16/20  
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

  
MARY MOODY, FINANCE DIRECTOR  
5000375.57297

CONTRACTOR:  
RMCI, Inc.

  
NAME Steven J. Duffy  
TITLE Vice President of Estimating

DATE: 6/2/2020  
CRS#02-157665-005  
Registration # 19-00110047