

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

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

RECITALS

WHEREAS, the City is the recipient of a Transportation Project Fund Grant for \$800,000 from the New Mexico Department of Transportation (“NMDOT”), for the design of Paseo del Sol Extension (the “Project”) as per Tierra Contenta Development Master Plan to include 2 travel lanes, bicycle lanes, sidewalks, lighting and landscaping; identified as Project No. LP50022 (Exhibit A); and

WHEREAS, the City executed the Grant agreement with the New Mexico Department of Transportation (“NMDOT”) for Transportation Project Fund Grant of \$800,000 in November 2021 which terminates on June 30, 2025; and

WHEREAS, the City has entered into a separate Agreement to have Contractor perform development of the Tierra Contenta Housing Project including infrastructure; and

WHEREAS, the Contractor will own and operate the new infrastructure until it is completed and formally accepted by the City; and

WHEREAS, the Contractor shall provide the City project management services for the expenditure of the Appropriation, as herein described; and

WHEREAS, Tierra Contenta Corporation owns the land on which the improvements to be paid for by the Appropriation will be located; and

WHEREAS, the Affordable Housing Act provides for public funding of infrastructure for affordable housing for the benefit of City residents—under Chapter 6, Article 27 NMSA 1978.

WHEREAS, the Contractor is one of such requisite and qualifications and is willing to engage with the City for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in the Agreement; and

WHEREAS, the Contractor does hereby accept its designation as [professional service], rendering services related to designing the Paseo del Sol Extension as per Tierra Development Master Plan for the City, as set forth in this Agreement; and

WHEREAS, it is agreed by the parties that the performance of the professional services is for a period of four years, as directed by the City.

NOW, THEREFORE, the parties hereby agree as follows:

1. Scope of Work.

A. The Contractor shall be the project manager and cause to be performed the following work:

1) Design and engineering of Paseo Del Sol Extension from its current western terminus at Jaguar Drive east to the Paseo del Sol/Herrera Drive roundabout, to be performed according to the Master Plan and Development Plan already approved by the Governing Body in October 2021 (Exhibit B). The design effort includes the following elements:

- a. Paseo del Sol extension and associated Paseo del Sol Loop roadways to include 2 travel lanes, bicycle lanes, and ADA compliant sidewalks
- b. Utilities – water, sewer, lift station, and dry utilities
- c. Drainage improvements, including Drainage Study update
- d. Streetscape landscaping
- e. Street lighting
- f. Surveying – topography and right-of-way dedication plat
- g. Traffic Impact Analysis update
- h. Geotechnical Investigation
- i. Archaeology update
- j. Design Standards (roadway typology and associated development guidelines)

2) All designs, plans, specifications and estimates are to be performed under the direct supervision of a Registered New Mexico Professional Engineer, in accordance with NMSA 1978 Section 61-23-26.

3) All aspects of the Project will be in accordance with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.

4) Nothing in this contract obligates the City to accept the road or its improvements as City property. Acceptance of the roadway will be done by a separate process according to City rules and regulations.

B. Project Deliverables.

The construction documents such as the specifications and drawings shall follow the NMDOT 2019 Edition, *Standard Specification for Highway and Bridge Construction* (Exhibit C); and *2019 Standard Drawings for Highway and Bridge Construction* (Exhibit D). Below is an example of the Drawing List for this project.

INDEX OF SHEETS	
Sheet #	Description
G-001	Cover Sheet
G-002	Vicinity Map
G-003	Index of Sheets
G-004	Summary of Quantities
G-005	General Notes
G-006	Environmental Commitments
C-101	Roadway Design Parameters
C-102	Typical Section
C-103	Demolition Plan
C-104	Grading and Drainage Plan
C-105	Surfacing Schedule
C-106	Structure Quantities
C-107	ADA Ramp Details
C-401	Plan and Profile
C-402	Structure Plan & Profile
C-501	Detail Sheet
C-701	Erosion Control Plan
C-702	Temporary Traffic Control (TCC) Schedules
C-703	TCC NMDOT Standard Drawings
C-704	Temporary Traffic Control Typical Section
C-705	Temporary Traffic Control
C-706	Signing Plans
C-801	Utility Plan
L-001	Landscape General Notes
L-101	Landscape Layout Plan
L-201	Landscape Layout Details
L-301	Planting Plan
L-401	Planting Details
IR-001	Irrigation Schedule and Notes
IR-101	Irrigation Plan
IR-201	Irrigation Details

C. Project Reporting.

1) The Contractor shall submit Project status reports monthly to the City’s Public Works Department by the 15th day of each month during the Project. The monthly reports shall indicate milestones achieved in the past month, value created, progress compared to a baseline schedule, any risks to schedule or budget.

2) The Contractor shall submit Final Report to the City’s Public Works Department within ten (10) days of the Project’s completion or within ten (10) days of grant termination date, whichever occurs first. In the Final Report, the Contractor shall attach Certification of Completion (Exhibit E) that it has complied with the requirements of 18.27.6 NMAC and this Agreement.

3) The City may require additional information as deemed necessary. The City and the NMDOT shall be permitted by the Contractor to conduct onsite inspections of the Project. The Contractor shall respond to requests for information regarding the Project within a reasonable period of time but no later than 15 calendar days after the request has been received.

D. Project Schedule.

ITEM	START	DURATION	COMPLETION
<i>Phase 1, Pre-Design</i>	<i>May 1, 2022</i>	<i>12 weeks</i>	<i>July 24, 2022</i>
<i>Phase 2, 30% Design</i>	<i>July 25, 2022</i>	<i>12 weeks</i>	<i>October 17, 2022</i>
City Review	October 18, 2022	3 weeks	November 8, 2022
BPAC Presentation - 30%			TBD
ENN Meeting - 30%			November 29, 2022
<i>Phase 3, 60% Design</i>	<i>November 9, 2022</i>	<i>8 weeks</i>	<i>January 4, 2023</i>
City Review	January 5, 2023	3 weeks	January 26, 2023
<i>Phase 4, 90% Design</i>	<i>January 27, 2023</i>	<i>8 weeks</i>	<i>March 24, 2023</i>
City Review	March 25, 2023	3 weeks	April 15, 2023
BPAC Presentation - 90%			TBD
<i>Phase 5, 100% Design</i>	<i>April 16, 2023</i>	<i>8 weeks</i>	<i>June 11, 2023</i>
City Review	June 12, 2023	3 weeks	July 3, 2023

E. Standard of Performance; Licenses.

1) The Contractor represents that it possesses the personnel, experience, and knowledge necessary to perform the services described under this Agreement.

2) The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily

performed not to exceed **seven hundred thirty-seven thousand six hundred ninety-four dollars (\$737,694)**, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling **sixty-two thousand two hundred forty-two dollars and ninety-three cents (62,242.93)** 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 seven hundred ninety-nine thousand nine hundred thirty-six dollars and ninety-three cents (\$799,936.93) (Exhibit F). 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 terminate on **June 30, 2025** unless terminated pursuant to Termination Appropriations terms herein. 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 the City upon written notice delivered to the Contractor 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; 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 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 appropriation from NMDOT and authorization being made by the Governing Body for the performance of this Agreement. If sufficient appropriations and authorization are not made, 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. **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, or approval by the City of a subcontractor, 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 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 appropriations or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to adjust the scope of work.

14. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

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 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.

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. 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. Commercial General Liability insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

21. 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.

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City 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.

23. 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.

24. 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.

25. 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.

26. 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: Regina Wheeler, Public Works Department Director, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504-0909, rawheeler@santafenm.gov, 505-955-6622.

To the Contractor: Daniel Werwath, Acting Executive Director, Tierra Contenta Corporation, 1111 Agua Fria St., Santa Fe, NM 87501, dwerwath@housingtrustonline.org, 505-989-3960.

27. 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.

28. 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.

29. Non-Collusion.

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City's Chief Procurement Officer.

30. Default/Breach.

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the City may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the City may also seek all other remedies under the terms of this Agreement and under law or equity.

31. Equitable Remedies.

The Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City 's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the City may have under applicable law, including, but not limited to, monetary damages.

32. Default and Force Maieure.

The City reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the City, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

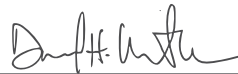
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:



ALAN WEBBER, MAYOR



DANIEL WERWATH

DATE: Aug 9, 2022

ACTING EXECUTIVE DIRECTOR

DATE: 3/24/2022

CRS#02266188003

Registration # 226872

ATTEST:



KRISTINE BUSTOS MIHELICIC, CITY CLERK 

GB MTG 07/27/2022

CITY ATTORNEY'S OFFICE:



MARCOS MARTINEZ
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



Alexis Lotero (Aug 9, 2022 15:56 MDT)

ALEXIS LOTERO, INTERIM FINANCE DIRECTOR

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Org. Name/Org#.