



# City of Santa Fe, New Mexico

## Memorandum



**DATE:** January 25, 2023

**TO:** Governing Body

*[Handwritten signature]*

**VIA:** \_\_\_\_\_  
**Regina Wheeler, Public Works Department Director**  
**Melissa McDonald, Parks & Open Space Division Director** *MAM*

**FROM:** Skyler Nielsen, Parks Operations Manager

**ACTION:** Request for approval of a contract in the amount of \$197,821.54 by Exerplay, INC. to upgrade the trash/recycle cans in Franklin Miles, Las Acequias, SWAN, and Ragle Parks from the current 44-gallon split stream can to a 64-gallon, dual can setup. (Skyler Nielsen, [smnielsen@santafenm.gov](mailto:smnielsen@santafenm.gov), 505-469-6688)

**BACKGROUND AND SUMMARY:** The current trash/recycle receptacles at Franklin Miles, Las Acequias, SWAN and Ragle Parks are a mixture of designs that do not match and hinder efficient collection by Parks Division staff. Currently, the most common type is a split design that holds a 22-gallon trash insert on one side, and a 22-gallon recycle insert on the other for a combined 44 gallons of collection per location. These reach capacity quickly and the small inserts get clogged with large pieces of trash giving the appearance of an overflowing receptacle that is largely empty. This requires more frequent collections, forcing Parks workers to disrupt their workflow to service cans that do not meet City needs.

Upgrading the current split design to a single stream trash receptacle paired with single stream recycling receptacle would increase each collection point in the Franklin Miles, Las Acequias and SWAN parks from 44 gallons of trash/recycle to 64 gallons, reducing collection frequency. The upgrade to larger inserts should also lower the occurrence of cans appearing full when they are only clogged at the insert opening. This would decrease drive time while reducing breaks in workflow to service receptacles thus decreasing complaints of overflowing cans. The standardizing of our refuse and recycling receptacles across City Parks would have added efficiency benefits regarding the ordering and stocking of parts/supplies/etc. The anticipated completion is June 30<sup>th</sup>, 2023.

**TENTATIVE COMMITTEE SCHEDULE:**

Finance Committee: 02/13/2023  
 Public Works & Utility Committee: 02/20/2023  
 Governing Body: 02/22/2023

**PROCUREMENT METHOD:** SPA-Exerplay, INC #90-000-19-00062

**FUNDING SOURCE:**

**Fund Name/Number:** General Fund/Fund 100  
**Munis Org Name/Number:** PTW Admin/1004150  
**Munis Object Name/Number:** Remodel & Replacement/572500

**ATTACHMENTS:**

- Contract
- Proposal(s)
- Procurement Documents (SPA)
- Certificate of Insurance
- Business License
- Summary of Contracts
- Procurement Checklist

Reviewed by:

*Halona Crowe*

\_\_\_\_\_  
 Halona Crowe  
 Business Operations Manager

CITY OF SANTA FE  
CONSTRUCTION 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 **Exerplay, 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.

**RECITALS**

**WHEREAS**, the City, through its Governing Body, is authorized to enter into a construction Contract for the project; and

**WHEREAS**, the City has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

**WHEREAS**, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of Feb 22, 2022.

The CITY and the CONTRACTOR agree:

**1. Scope of Work.**

A. The Contractor shall perform the following work and as described in Exhibit "A" attached hereto and incorporated herein:

Trash and recycle can installations and modifications at Las Acequias Park, SWAN Park, and Franklin Miles Park. The Contractor will also deliver materials for future modifications to the receptacles at Ragle Park.

The Contractor shall be responsible for verifications of all conditions, measurements, and dimensions for bidding.

The Contractor shall be responsible for all permits, fees, and State inspections associated with the construction.

**2. Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, with such compensation not to exceed (\$182,639.62), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the City to the Contractor, as follows:

The Unit Bid Contract Total is determined as follows:

Base Bid (OR BID ALTERNATE A)	\$182,639.62
Gross Receipts Tax (8.3125%)	\$15,181.92
<i>Base Bid plus NMGR</i>	\$197,821.54

**The total amount payable to the Contractor under this Agreement, including Alternates (if needed) gross receipts tax and expenses, shall not exceed \$197,821.54. 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, 2023** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). 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 Cityship 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 NMSA 1978, sec. 38-3-2. 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. 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. Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

**C. 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.

**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, 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.

**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:

To the City: Melissa A. McDonald, Parks and Open Space Division Director  
PO Box 909  
Santa Fe, NM 87504-0909

To the Contractor: Andrea Neal  
Exerplay, Inc.  
PO Box 1160, Cedar Crest, NM 87008

**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.

**30. Progress Payments.**

Based upon Application for Payment submitted to the City by the Contractor and Certificates for Payment issued by the City, the City shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the City; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the City shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

**31. Liquidated Damages.**

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time for Physical Completion or any extension in the Contract thereof, the Contractor agrees to pay the City the amount specified in section 108.8 Liquidated Damages in the 2014 Edition (NMDOT SSHBC), per consecutive calendar day that passes until Physical Completion and acceptance or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

**32. Final Payment.**

Final payment, constituting the entire unpaid balance of the Contract sum, unless it is a disputed payment, shall be paid by the City to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion

have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the City. In addition, the Contractor shall provide to the City a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

**33. Schedule.**

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit a progress schedule covering project operations for the 30 day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract.

**34. General and Special Provisions**

A. Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

B. An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the City could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

C. This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

D. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

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

F. The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

G. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and

construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

H. Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

I. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

J. Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

K. Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

L. Words and Phrases. Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

M. Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

N. Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

O. Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

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, CITY  
MAYOR

DATE: Feb 24, 2023

CONTRACTOR:  
EXERPLAY, INC.



NAME Sarah Love

Contract Administrator  
TITLE

DATE: 01/20/2023

CRS# 02159406006

Registration # \_\_\_\_\_

ATTEST:



KRISTINE BUSTOS MIHELIC, CITY CLERK *XIV*  
GB MTG 02/22/2023

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Jan 13, 2023 10:16 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



Emily K. Oster (Feb 23, 2023 21:29 MST)

EMILY OSTER, FINANCE DIRECTOR

Org. Name/Org# 1001450/572500 *AH*

PO Box 1160  
 Cedar Crest NM 87008-1160  
 Fax 505.281.0155  
 Toll Free 800.457.5444  
 www.exerplay.com



DATE NUMBER  
 1/10/2023 ST011023-2

**QUOTATION prepared for:**

City of Santa Fe  
 Parks Department

**Please Issue Purchase Order to:**

Exerplay, Inc  
 PO Box 1160, Cedar Crest, NM 87008  
 fax to 505-281-0155 or  
 email to: Susanne@exerplay.com

ITEM	DESCRIPTION	QTY	COST	TOTAL
Project	SITE FURNISHINGS AND INSTALLATION			
49-32	32-Gallon Plastic Replacement Liner	69	42.00	2,898.00T
Dumor	CVR-30-RC-0017 • 25 3/8" Steel Flat Cover, 10" Hole, Decal	69	175.00	12,075.00T
84-32	32-Gallon All-Steel Receptacle	63	1,133.00	71,379.00T
DuMor	CVR-30-RC-0075 • 25 3/8" Steel Flat Cover, 4" Hole, Decal	63	91.00	5,733.00T
	Sub-Total			92,085.00
NM DISC	NM State Contract Discount for PA# 90-000-19-00062		-5.00%	-4,604.25
Freight	Freight/shipping charges (753-138635-22C) -NOTE- Order Lift Gate on Truck	1	18,264.00	18,264.00T
	INSTALLATION			
	• SWAN PARK •			
Demolition	Remove (13) Existing Trash Receptacles and Transport to Park Department Siler Road location	1	6,484.00	6,484.00T
Install	Transport New Receptacles From Parks Department Siler Road Location and Install in Park.	1	8,857.00	8,857.00T
Install	(7) Trash Receptacles, (7) Recycling Receptacles, and (7) New Liners/Lids. Purchase & Deliver (4) Precast Concrete Bases	1	1,403.00	1,403.00T
	• LAS ACEQUIAS PARK •			
Demolition	Remove (16) Existing Trash Receptacles and Transport to Parks Department Siler Road location	1	8,857.00	8,857.00T
Install	Transport New Receptacles From Parks Department Siler Road Location and Install in Park.	1	8,857.00	8,857.00T
	(5)Trash Receptacles, (9) Recycling Receptacles, and (11) New Liners/Lids			
	• FRANKLIN MILES PARK •			
Demolition	Remove (25) Existing Trash Receptacles and Transport to Parks Department Siler Road Location	1	11,123.00	11,123.00T
Install	Transport New Receptacles From Parks Department Siler Road Location and Install in Park	1	17,924.00	17,924.00T
Install	(11) Trash Receptacles, (18) Recycling Receptacles, and (16) New Liners/Lids Purchase & Deliver (4) Precast Concrete Bases	1	1,077.00	1,077.00T
	-NOTE- Price EXCLUDES Offloading Deliveries of All New Receptacles, Replacement Lids and Liners at Siler Road Location, Disposal of Old Receptacles & Inserts			

• CONTINUE ON PAGE 2 •

REP  
AN

Quote prepared by Susanne Turner  
 Susanne@exerplay.com

**TOTAL**

PO Box 1160  
 Cedar Crest NM 87008-1160  
 Fax 505.281.0155  
 Toll Free 800.457.5444  
 www.exerplay.com



DATE NUMBER  
 1/10/2023 ST011023-2

**QUOTATION prepared for:**

City of Santa Fe  
 Parks Department

**Please Issue Purchase Order to:**

Exerplay, Inc  
 PO Box 1160, Cedar Crest, NM 87008  
 fax to 505-281-0155 or  
 email to: Susanne@exerplay.com

ITEM	DESCRIPTION	QTY	COST	TOTAL
Concrete	<p>• RAGLE PARK •            Purchase &amp; Deliver (20) Precast Concrete Bases            -NOTE- Price EXCLUDES Demo and Installation at This Site</p> <p>-NOTE-            Trash Will be Emptied by the City Prior to Handling or            Removal of Receptacles.            All Installation Prices Include NM Wage Rates.</p>	1	5,642.00	5,642.00T
Bond	Performance/Payment Bond	1	6,670.87	6,670.87T
Msg I	<p>Pricing is for the above listed material and installation only and does not include offloading of material at the time of delivery, storage, security, site preparation, fencing, or permitting. Any necessary permits or special inspections are the responsibility of the End Owner.</p> <p>- NOTE - ExerPlay reserves the right to revise pricing if any portion of this quote is changed or removed and may result in a delay in ordering materials for this project.</p>			
Terms	<p>Billing and Payment Terms:            Unless otherwise negotiated and agreed upon, ExerPlay's billing terms are Net 30 from the date of the invoice, with approved credit. ExerPlay's process is to bill the customer when their equipment ships. Installation is billed upon completion. Bonds are billed when ordered.</p>			
AN	<p>For more information please contact Andrea Neal at 505.999.8031, or andrea@exerplay.com</p> <p>- PRICING IS GOOD FOR 14 DAYS -</p>			
	NMGRT - Santa Fe (01-123)		8.3125%	15,181.92

REP  
 AN

Quote prepared by Susanne Turner  
 Susanne@exerplay.com

**TOTAL**

\$197,821.54



State of New Mexico  
General Services Department  
Purchasing Division

Statewide Price Agreement Amendment

**Awarded Vendor:**  
5 Vendors

Number: 90-000-19-00062

Amendment No.: Three

Term: October 10, 2019 – October 9, 2023

**Ship To:**  
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Procurement Specialist: Kimberly A Hunt-Brown

Telephone No.: 505-490-3152 **KAHB**

Email: [Kimberly.Hunt-Brown@state.nm.us](mailto:Kimberly.Hunt-Brown@state.nm.us)

**Invoice:**  
As requested.

Title: Park Site Furnishings

This amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from October 10, 2022, to October 9, 2023, at the same price, terms and conditions for Vendors (AA) Champlin Tire Recycling, Inc.; (AB) Exerplay, Inc.; (AD) RJ Thomas Manufacturing Company, Inc.; and (AF) SiteScapes, Inc.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended for Vendor (AE) School Equipment Inc., from October 10, 2022, to October 9, 2023, at the same terms and conditions but with a discount rate reduction effective immediately as shown on the following page.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

*Valerie Paulk*

Date: 8/5/2022

Mark Hayden, New Mexico State Purchasing Agent

x **This Agreement was signed on behalf of the State Purchasing Agent**

*JD*

**Discount Reduction for Vendor (AE) School Equipment Inc.**

<b>Item #</b>	<b>Description of Item</b>	<b>Current Discount</b>	<b>New Discount</b>
001	Park Site Furnishings	12%	5%
004	Replacement Parts	12%	5%

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 90-000-19-00062

Page-6

**Awarded Vendors:**

(AA) 0000142884  
Champlin Tire Recycling, Inc  
PO Box 445  
301 Cedar  
Concordia, KS 66901  
785-243-3345  
ctri@nckcn.com

Delivery: Commercial carriers 3 to 4 week lead time ARO

(AB) 0000050184  
Exerplay, Inc  
PO Box 1160  
Cedar Crest, NM 87008  
505-281-0151  
info@exerplay.com

Delivery: 3-8 weeks, varies by manufacturer

(AC) 0000105636  
Jamestown Advanced Products, Corp.  
2855 Girts Rd.  
Jamestown, NY 14701  
800-452-0639  
shallenbeck@jamestownadvanced.com

Delivery: 30-45 days ARO

(AD) 0000015218  
R.J. Thomas Mfg. Co. Inc.  
PO Box 946  
Cherokee, IA 51012-0946  
800-762-5002  
pilotrock@rjthomas.com

Delivery: (14-45) days ARO to ship date. Delivery time varies with different products and with quantity per order. Our Customer Service Dept. can quote the delivery time to the customer based on desired products and quantities.

(AE) 0000047972  
School Equipment, Inc.  
7800 Phoenix Ave. NE  
Albuquerque, NM 87110  
505-888-5959  
support@seinm.com

Delivery: 3-4 weeks ARO

(AF) 0000142903  
SiteScapes, Inc.  
PO Box 22326  
Lincoln, NE 68542  
531-333-0140  
britny@sitescapesonline.com

Delivery: Production lead times are 55-70 days. Expect 4-5 days Delivery Transit. Lead times may increase due to high volume orders.

State of New Mexico  
 General Services Department  
 Purchasing Division  
 Price Agreement #: 90-000-19-00062

Item	Approx. Qty.	Unit	Article and Description	Unit Price
001		%	Discount offered on all Park Site Furnishings i.e. tables, benches, bike racks, waste receptacles, etc. Price Basis: List price less discount. Please provide discount. Manufacturer: _____ Bidder is required to indicate type of furnishing, i.e. vinyl coated, steel furnishing etc. Furnishing type: _____	
			<b>(AA) Manufacturer: Champlin Tire Recycling, Inc</b> <b>Furnishing type: Park Benches &amp; Picnic Tables made from recycled rubber &amp; recycled plastic</b>	0%
			<b>(AB) Manufacturer: Anova Furnishings, Dog on it, Dumor, Kay Park, Landscape Structures, Inc, Superior Recreation (SII)</b> <b>Furnishing type: Site furnishings to include but not limited to: Vinyl Coated, Powder Coated, Recycled Plastic, Wood and Steel Furnishings</b>	5%
			<b>Manufacturer: Dero, SportWorks</b> <b>Furnishing type: Bike Rack</b>	5%
			<b>Manufacturer: Gared Sports, PW Athletic</b> <b>Furnishing type: Misc. Seating i.e. player benches etc</b>	5%
			<b>Manufacturer: Bravado, Most Dependable Fountain (MDF)</b> <b>Furnishing type: N/A</b>	N/A
			<b>(AC) Manufacturer: Jamestown Advanced Products, Corp.</b> <b>Furnishing type: Picnic Tables, Benches, Dog Park Equipment, Charcoal Grills &amp; Fire Rings, RV Power Outlets, Bike Racks, Trash &amp; Recycling Receptacles, Food Storage Lockers, Steel Furnishings - thermoplastic, powder coat &amp; galvanized finishes available</b>	10%
			<b>(AD) Manufacturer: R.J. Thomas Mfg.Co./Pilot Rock brand</b> <b>Furnishing type: Steel benches &amp; picnic tables w/ wood/plastic/coated steel or aluminum seats/tops, recycled plastic benches &amp; tables, trash receptacles of steel/wood/or plastic, steel grills and campfire rings and bike racks.</b>	20.0% Discount off current price list.
			<b>(AE) Manufacturer: MyTCoat</b> <b>Furnishing type: proprietary coated and premium polyethylene coated steel furniture</b>	12%
			<b>(AF) Benches, Trash Receptacles, Tables, Bike Racks, Planters</b> <b>Manufacturer: SiteScapes, Inc.</b> <b>Furnishing type: Steel Furnishings</b>	20%

State of New Mexico  
 General Services Department  
 Purchasing Division  
 Price Agreement #: 90-000-19-00062

Item	Approx. Qty.	Unit	Article and Description	Unit Price
002		%	Discount offered on all pre-cast Park Site Furnishings to include special architectural designs by the manufacturer i.e. concrete tables, benches, and waste receptacle, etc. Pre-cast concrete, cast-stone, glass fiber reinforced concrete and glascrete, acceptable. Price Basis: List price less discount. Please provide discount. Manufacturer : _____	
			<b>(AB) Manufacturer: Kay Park, Landscape Structures, Bravado</b>	<b>5%</b>
003		%	Discount offered on all park drinking fountains, park hydrants, and pet waste disposal system to include special architectural designs by the manufacturer. Price Basis: List price less discount. Please provide discount. Manufacturer : _____	
			<b>(AB) Manufacturer: Dog on it, Kay Park, Most Dependable Fountains (MDF)</b>	<b>5%</b>
			<b>(AC) Jamestown Advanced Products, Corp. Offer Pet Waste Stations Only</b>	<b>10%</b>
004		%	Discount offered off vendor's most current catalog price list for replacement parts & related accessories for items 001-003 Price Basis: List price less discount. Please provide discount. Manufacturer: _____	
			<b>(AB) Manufacturer: Anova Furnishings, Dero, Dog on it, Dumor, Gared Sports, , Kay Park, Landscape Structures, PW Athletics, Superior Recreation (SII), SportWorks, Bravado, Most Dependable Fountains (MDF) No price list available, part prices are provided by Manufacturer as requested.</b>	<b>5%</b>
			<b>(AD) Manufacturer: R.J. Thomas Mfg.Co. /Pilot Rock brand</b>	<b>20.0% Discount off current price list.</b>
			<b>(AE) Manufacturer: MyTCoat</b>	<b>12%</b>
			<b>(AF) Manufacturer: SiteScapes, Inc.</b>	<b>20%</b>



State of New Mexico  
 General Services Department  
 Purchasing Division  
 Price Agreement #: 90-000-19-00062

Item	Approx. Qty.	Unit	Article and Description	Unit Price
005			Website Address for Price List: _____	
			(AC) <a href="http://www.JamestownAdvanced.com">www.JamestownAdvanced.com</a> & Upon Request	
			(AD) <a href="https://www.pilotrock.com">https://www.pilotrock.com</a>	
			(AE) <a href="http://www.mycoat.com">www.mycoat.com</a>	
			(AF) <a href="https://sitiescapesonline.com/">https://sitiescapesonline.com/</a>	

\*\*\* 5 Items Total \*\*\*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/31/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


<b>PRODUCER</b> Daniels Insurance, Inc.-Albq. 320 Gold Avenue SW, Ste 700  Albuquerque NM 87102	<b>CONTACT NAME:</b> Ed Risley <b>PHONE (A/C, No, Ext):</b> (505) 766-9676 <b>FAX (A/C, No):</b> (505) 766-9679 <b>E-MAIL ADDRESS:</b> tspence@danielsinsuranceinc.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Exerplay, Inc  PO Box 1160  Cedar Crest NM 87008	(505) 281-0151	<b>INSURER A:</b> Travelers Casualty Insurance C 19046 <b>INSURER B:</b> Travelers Casualty and Surety 19038 <b>INSURER C:</b> Great American E & S Insurance 37532 <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES**      **CERTIFICATE NUMBER:** Cert ID 33920      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		PL225986404	04/15/2022	04/15/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Empl Benefits Liab \$ 1,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY		BA-9L093946-22-42-G	04/15/2022	04/15/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		XS225986504	04/15/2022	04/15/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	UB-8K006500-22-42-G	04/15/2022	04/15/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 \$ \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 General and Auto liability policies contain a Blanket Additional Insured provision that establishes the scope of Additional Insured coverage granted to the Certificate Holder. Where permitted by state law, and per a Blanket Waiver of Subrogation Endorsement, the Insurer waives its right to subrogate against the Certificate Holder by reason of payments made under the General and Auto liability and Workers' Compensation policies but only under the circumstances stated in the policies. General Liability policy contains a Blanket Additional Insured-Including Completed Operations provision that establishes the scope of Additional Insured coverage granted to the Certificate Holder. Policies contain a 30 Day Notice of Cancellation 10 days for non-payment of premium provision that establishes the scope of Notice granted to the Certificate Holder. General

<b>CERTIFICATE HOLDER</b>  City of Santa Fe  2651 W. Siringo Rd. Building E PO Box 909 Santa Fe NM 87504	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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# DESCRIPTION OF OPERATIONS SECTION CONTINUED

DATE  
03/31/2022

**CERTIFICATE HOLDER:**

City of Santa Fe

2651 W. Siringo Rd. Building E  
PO Box 909  
Santa Fe NM 87504

**INSURED:**

Exerplay, Inc

PO Box 1160  
Cedar Crest NM 87008

**DESCRIPTION OF OPERATIONS CONTINUED:**

Liability policy will pay for a covered loss on a primary basis and the Company will not seek contribution from the Certificate Holder for such loss until the Company's primary limits of liability have been exhausted when required by written contract. Umbrella/Excess Liability follows form. Project: Ragle Park, 2530 West Zia St., Santa Fe, NM 87505  
The City of Santa Fe, their officials, officers, employees, and agents are included as certificate holder.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **AUTO COVERAGE PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li><b>A. BLANKET ADDITIONAL INSURED</b></li> <li><b>B. EMPLOYEE HIRED AUTO</b></li> <li><b>C. EMPLOYEES AS INSURED</b></li> <li><b>D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b></li> <li><b>E. TRAILERS – INCREASED LOAD CAPACITY</b></li> <li><b>F. HIRED AUTO PHYSICAL DAMAGE</b></li> <li><b>G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b></li> </ul> | <ul style="list-style-type: none"> <li><b>H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT</b></li> <li><b>I. WAIVER OF DEDUCTIBLE – GLASS</b></li> <li><b>J. PERSONAL PROPERTY</b></li> <li><b>K. AIRBAGS</b></li> <li><b>L. AUTO LOAN LEASE GAP</b></li> <li><b>M. BLANKET WAIVER OF SUBROGATION</b></li> </ul> |
|---|---|

#### **A. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **B. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while

performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1)** Any covered "auto" you lease, hire, rent or borrow; and
- (2)** Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### **C. EMPLOYEES AS INSURED**

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

## COMMERCIAL AUTO

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2) of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4) of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph C.1. of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

### F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

#### Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Covered Autos Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

(1) The most we will pay for "loss" to any one "auto" that you hire, rent or borrow is the lesser of:

(a) \$50,000;

(b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

(3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

(5) This Coverage Extension does not apply to:

(a) Any "auto" that is hired, rented or borrowed with a driver; or

(b) Any "auto" that is hired, rented or borrowed from your "employee".

### G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

### H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph C.1.b. of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

### I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

### J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

#### Personal Property Coverage

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. AUTO LOAN LEASE GAP**

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

**Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles**

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

- (a) Overdue lease or loan payments at the time of the "loss";
- (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (c) Security deposits not returned by the lessor;
- (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (e) Carry-over balances from previous loans or leases.

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

### **PROVISIONS**

1. The following is added to Paragraph **A.1.c., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**NOTICE OF CANCELLATION TO DESIGNATED ENTITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM  
EXCESS LIABILITY COVERAGE FORM  
COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM  
PROFESSIONAL LIABILITY COVERAGE FORM

Schedule

**Name of Entity and Address:**

As required by Written Contract Signed by Both Parties Prior to Loss. The retail agent is responsible for maintaining the list of certificate holders.

Number of Days Notice of Cancellation: 30

- A. If we cancel this Policy for any reason other than for nonpayment of premium we will mail or deliver notice of the cancellation to the entity named in the above schedule at the address shown for that entity in the above schedule.
- B. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- C. If notice is mailed, proof of mailing will be sufficient proof of notice.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SPECIALTY PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. For complete details on specific coverages, consult the Policy wording.

<b>Coverage</b>	<b>Limit of Insurance</b>	<b>Page</b>
Non-Owned Aircraft	Included	2
Non-Owned Watercraft	Included	2
Medical Payments Increased Limits	\$20,000	3
Who Is An Insured: Broadened Named Insured	Included	3
Who Is An Insured: Fellow Employee	Included	3
Who Is An Insured: Newly Formed or Acquired Organizations	Included	4
Knowledge of Occurrence, Claim or Suit	Included	4
Unintentional Errors Or Omissions	Included	4
Personal & Advertising Injury Amendment of Discrimination or Humiliation	Included	4
Incidental Malpractice Liability	Included	5
Additional Insured: Owners, Lessees, and Contractors	Included	5
Additional Insured: Vendors	Included	6
Primary and Non-Contributory Extension	Included	8
Damage to Premises Rented to You (Fire, Lightning, and "Explosion")	\$500,000	8
Waiver of Subrogation	Included	9
Property Damage - Elevators	Included	9

Coverage	Limit of Insurance	Page
Contractual Liability for Railroad Exposures	Included	10
Supplementary Payments: Bail Bonds	\$2,500	10
Supplementary Payments: Loss of Earnings	\$500	10
Amended Bodily Injury Definition	Included	10

#### A. Non-Owned Aircraft

Under paragraph 2. **Exclusions of SECTION I - COVERAGES - Coverage A - Bodily Injury and Property Damage Liability**, exclusion **g. Aircraft, Auto or Watercraft** does not apply to an aircraft provided:

1. it is not owned by any insured;
2. it is hired, chartered or loaned with a trained paid crew;
3. the pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating him or her a commercial or airline pilot; and
4. it is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

#### B. Non-Owned Watercraft

Under paragraph 2. **Exclusions of SECTION I - COVERAGES - Coverage A - Bodily Injury and Property Damage Liability**, subparagraph (2) of exclusion **g. Aircraft, Auto or Watercraft** is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) less than 55 feet long; and
  - (b) not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply to watercraft 27 to 55 feet long if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

**C. Medical Payments Increased Limits**

Unless **Coverage C - Medical Payments**, or the Product-Completed Operations Hazard has been excluded from this Policy, the following applies:

Under paragraph 2. Exclusions of **SECTION I - COVERAGES, Coverage C - Medical Payments**, exclusion f. **Products-Completed Operations Hazard** is replaced by the following:

**f. Product-Completed Operations Hazard**

Included within the "products-completed operations hazard."

However, this exclusion does not apply to expenses for dental services.

The Medical Expense Limit in paragraph 7. of **SECTION III - LIMITS OF INSURANCE** is replaced by the following Medical Expense Limit:

The Medical Expense Limit provided by this Policy shall be the greater of:

- a. \$20,000; or
- b. the amount shown in the Declarations for Medical Expense Limit

This provision 7. is subject to all the terms of **SECTION III - LIMITS OF INSURANCE**

**D. Who Is An Insured: Broadened Named Insured**

Under **SECTION II - WHO IS AN INSURED**, the following item 2.e. is added:

- e. Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of voting stock on the effective date of this Coverage Part. The insurance afforded herein for any subsidiary not named in this Coverage Part as a Named Insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its Limits of Insurance.

**E. Who Is An Insured: Fellow Employee**

- 1. The following is added to paragraph 2.a.(1) of **SECTION II - WHO IS AN INSURED**

Paragraph (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business. However, none of these co-"employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury," caused in whole or in part by their intoxication by liquor or controlled substances.

Paragraph (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, including the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury," caused in whole or in part by their intoxication by liquor or controlled substances.

This coverage is excess over any other valid and collectible insurance available to your "employee" or "volunteer worker."

**F. Who Is An Insured: Newly Formed or Acquired Organizations**

Paragraph 3. of **SECTION II - WHO IS AN INSURED** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. coverage under this provision is afforded only until the next occurring annual anniversary of the beginning of the policy period shown in the Declarations, or the end of the policy period, whichever is earlier; and
  - b. coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization; and
  - d. records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

**G. Knowledge of Occurrence, Claim or Suit**

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 2. **Duties in the Event of Occurrence, Offense, Claim or Suit**:

Knowledge of any "occurrence", claim, or "suit" by any agent, servant or "employee" of the Named Insured does not in itself constitute knowledge by the Insured unless notice of such "occurrence", claim or "suit" shall have been received by:

- a. you, if you are an individual;
- b. a partner, if you are a partnership; or
- c. an executive officer or insurance manager, if you are a corporation.

**H. Unintentional Errors or Omissions**

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 6. **Representations**:

If you unintentionally fail to disclose any hazards existing at the inception date of this Policy, we will not deny coverage under this Coverage Form because of such failure.

However, this does not affect our right to collect additional premium, exercise our right of cancellation or non-renewal, or enforce other legal rights based upon a material misrepresentation in response to a specific question in the application for this Policy.

**I. Personal and Advertising Injury Amendment of Discrimination or Humiliation**

Unless **Coverage B - Personal and Advertising Injury Liability** is excluded from this Policy or does not apply, the following applies:

Under **SECTION V - DEFINITIONS**, paragraph 14. **Personal and Advertising Injury**, subparagraph h. is added:

h. discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

- (1) not done intentionally by or at the direction of;
  - (a) an insured; or
  - (b) any "executive officer," director, stockholder, partner or member of the Insured; and
- (2) not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

#### J. Incidental Malpractice Liability

1. **SECTION II - WHO IS AN INSURED** is amended by deleting item **2.a.(1)(d)** in its entirety and replacing it with the following:

(d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to nurses, emergency medical technicians or paramedics who are employed by you to provide medical or paramedical services.

2. Under **SECTION V - DEFINITIONS**, paragraph **3. Bodily Injury** is replaced by the following:

3. "**Bodily injury**" means injury, sickness, disease or "incidental medical malpractice" sustained by a person, including death of a person. "Bodily injury" also means mental anguish, mental injury, or shock if directly resulting from physical injury, sickness, or disease to that person.

3. The following is added to **SECTION V - DEFINITIONS**:

"**Incidental medical malpractice**" means "bodily injury" arising out of the negligent rendering or failure to render medical or paramedical services to persons by any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services provided you are not engaged in the business or occupation of providing any services referred to in this definition.

#### K. Additional Insured

1. **Owners, Lessees, or Contractors**

a. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured:

- (1) Any person or organization, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (a.) premises or equipment you own, rent, lease or occupy; or
  - (b.) your acts or omissions; or
  - (c.) the acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured.

However;

- (a.) the insurance afforded to such additional insured only applies to the extent permitted by law; and

- (b.) if coverage provided to the Additional Insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
- (1) This insurance does not apply to "bodily injury" or "property damage" occurring after:
- (a.) all work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured at the location of the covered operations has been completed; or
- (b.) that portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.
- (2) The insurance provided to any additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
- (a.) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or
- (b.) Supervisory, inspection, architectural or engineering activities.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that Insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering or the failure to render any professional services by or for you.
- c. With respect to the insurance afforded to these Additional Insureds, the following is added to **SECTION III - LIMITS OF INSURANCE**:

If coverage provided to the Additional Insured is required by a contract or agreement, the most we will pay on behalf of the Additional Insured is the amount of insurance:

- (1) Required by the contract or agreement; or
- (2) Available under the applicable Limits of Insurance shown in the Declarations;

Whichever is less.

## 2. Vendors

- a. **SECTION II - WHO IS AN INSURED**, is amended to include as an additional insured:
- (1) Any person or organization (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

- (a.) the insurance afforded to such vendor only applies to the extent permitted by law; and
  - (b.) if coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.
- b. With respect to the insurance afforded to these vendors, the following additional exclusions apply:
- (1.) The insurance afforded the vendor does not apply to:
    - (a.) "bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
    - (b.) any express warranty unauthorized by you;
    - (c.) any physical or chemical change in the product made intentionally by the vendor;
    - (d.) repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
    - (e.) any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
    - (f.) demonstration, installation, servicing or repair operations, except such operations performed by the vendor in full compliance with the manufacturer's written instructions at the vendor's premises in connection with the sale of the product;
    - (g.) products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
    - (h.) "bodily injury" or "property damage" arising out of the sole negligence of the vendors for its own acts or omission of those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
      - (i) the exceptions contained in subparagraphs (d.) or (f.); or
      - (ii) such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
  - (2.) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- c. With respect to the insurance afforded to these vendors, the following is added to **SECTION III - LIMITS OF INSURANCE:**
- If coverage provided to the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is the most amount of insurance:
- (1.) Required by the contract or agreement; or

- (2.) Available under the applicable Limits of Insurance shown in the Declarations;

Whichever is less.

### 3. Primary and Non-Contributory Extension

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

Condition 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- a. The following is added to paragraph a. Primary Insurance:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1.) The Additional Insured is a Named Insured under such other insurance; and
- (2.) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

- b. The following is added to paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an Additional Insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the Additional Insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an Additional Insured on other policies.

### L. Damage to Premises Rented to You

If Damage to Premises Rented to You is not otherwise excluded from this Coverage Part:

1. Under paragraph 2. Exclusions of SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability:

3. The last paragraph of paragraph 2. Exclusions is deleted in its entirety and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, or "explosion," to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in SECTION III - LIMITS OF INSURANCE.

2. Paragraph 6. Under SECTION III - LIMITS OF INSURANCE is deleted in its entirety and replaced by the following:

6. Subject to paragraph 5. Above, the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning, or "explosion," while rented to you or temporarily



occupied by you with the permission of the owner, for all such damage caused by fire, lightning, or "explosion," proximately caused by the same event, whether such damage results from fire, lightning, or "explosion," or any combination of the three, is the higher of **\$500,000** or the amount shown in the Declarations for the Damage to Premises Rented to You Limit.

3. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, subsection 4. **Other Insurance**, paragraph b. **Excess Insurance item (ii) of the Occurrence Form** and item (iii) of the **Claims-Made Form** where the words, fire insurance, appear they are changed to, insurance for fire, lightning, or "explosion."
4. As regards coverage provided by this provision **L. Damage to Premises Rented to You, SECTION V - DEFINITIONS**, paragraph 9. **Insured Contract**, subparagraph a. is replaced with the following:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, or "explosion," to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract."
5. As regards coverage provided by this provision **L. Damage to Premises Rented to You, SECTION V - DEFINITIONS** is amended by the addition of the following definition:

**"Explosion"** means a sudden release of expanding pressure accompanied by a noise, a bursting forth of material and evidence of the scattering of debris to locations further than would have resulted by gravity alone.

"Explosion" does not include any of the following:

- (a) artificially generated electrical current including electrical arcing, that disturbs electrical devices, appliances or wires;
- (b) rupture or bursting of water pipes;
- (c) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control; or
- (d) rupture or bursting caused by centrifugal force.

#### **M. Waiver of Subrogation**

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, subsection 8. **Transfer or Rights of Recovery Against Others to Us**, the following paragraph is added:

- b. If required by a written "insured contract" executed prior to the occurrence or offense, we waive our right of recovery we have against any person or organization named in such "insured contract," because of payments we make for injury or damage arising out of your ongoing operations or "your work" for that person or organization.

#### **N. Property Damage - Elevators**

1. Under paragraph 2. **Exclusions** of **SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**, subparagraphs (3), and (4) of exclusion j. **Damage to Property** do not apply if such "property damage" results from the use of elevators.

2. The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Condition **4. Other Insurance**, paragraph **b. Excess Insurance**

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

**O. Contractual Liability for Railroad Exposures**

Under **SECTION V - DEFINITIONS**, paragraph **9. Insured Contract**, subparagraph **f.(1)**, is deleted in its entirety.

**P. Supplementary Payments**

1. In the **Supplementary Payments - Coverages A and B** provision, paragraph **1.b.** is replaced with:
  - b. Up to **\$2,500** for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
2. In the **Supplementary Payments - Coverages A and B** provision, paragraph **1.d.** is replaced by the following:
  - d. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to **\$500** a day because of time off work.

**Q. Amended Bodily Injury Definition**

Under **SECTION V - DEFINITIONS**, definition **3. Bodily injury** is replaced by the following:

3. "**Bodily injury**" means bodily injury, sickness, or disease sustained by a person, including death of a person. "Bodily injury" also means mental anguish, mental injury, or shock, if directly resulting from physical injury, sickness, or disease to that person.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations:
Blanket as Required by Written Contract	All Locations, Any Locations, or Per Written Agreement/Contract The City of Las Cruces The City of El Paso The City of Wainwright
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - STATE OR GOVERNMENTAL  
AGENCY OR SUBDIVISION OR POLITICAL  
SUBDIVISION - PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>State Or Governmental Agency Or Subdivision Or Political Subdivision:</b>
Blanket as Required by Written Contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

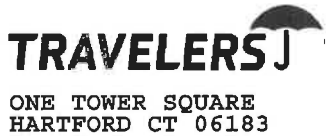
**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 00 03 13 (00) - 001**

POLICY NUMBER: UB-8K006500-22-42-G

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER.

**INCLUDING:**

THE CITY OF EL PASO 300 N. CAMPBELL STREET, EL PASO, TX 79901



ONE TOWER SQUARE  
HARTFORD CT 06183

WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY  
ENDORSEMENT WC 42 03 04 ( B) – 001

POLICY NUMBER: UB-8K006500-22-42-G

**TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

1.  Specific Waiver

Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.  
INCLUDING: THE CITY OF EL PASO 300 N. CAMPBELL STREET, EL PASO, TX 79901

2. Operations:

**ALL TEXAS OPERATIONS**

3. Premium:

The premium charge for this endorsement shall be 2.00 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described..

4. Advance Premium: \$ **SEE SCHEDULE**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_

**EXCESS LIABILITY COVERAGE FORM**

There are provisions in this policy that restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured. The words "we," "us" and "our" refer to the Company providing this insurance. The word Insured means any person or organization qualifying as such in the "first underlying insurance." Other words and phrases that appear in quotation marks have special meaning and can be found in the **Definitions** Section or the specific policy provision where they appear.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations we agree with you to provide the coverage as follows:

**INSURING AGREEMENT****I. Coverage**

We will pay on behalf of the Insured the amount of "loss" covered by this insurance in excess of the "Underlying Limits of Insurance" shown in Item 5. of the Declarations, subject to **Insuring Agreement** Section II., **Limits of Insurance**. Except for the terms, conditions, definitions and exclusions of this policy, the coverage provided by this policy will follow the "first underlying insurance."

pay for all "loss" that is subject to an aggregate limit provided by the "first underlying insurance." The aggregate limit applies separately and in the same manner as the aggregate limits provided by the "first underlying insurance," provided that all "underlying insurance" applies their aggregate limit in the same manner as the "first underlying insurance."

**II. Limits Of Insurance**

**A.** The Limits of Insurance shown in the Declarations and the rules below describe the most we will pay under the terms of this insurance regardless of the number of:

1. Insureds;
2. claims made or suits brought;
3. persons or organizations making claims or bringing suits.

**B.** The Limits of Insurance of this policy will apply as follows:

1. This policy applies only in excess of the "Underlying Limits of Insurance" shown in Item 5. of the Declarations.
2. The aggregate limit shown in Item 4. of the Declarations is the most we will

**3.** Subject to **B.2.**, the occurrence limit stated in Item 4. of the Declarations is the most we will pay for all "loss" arising out of any one occurrence to which this policy applies.

**4.** Subject to Paragraphs **B.2.** and **B.3.** above, if the "Underlying Limits of Insurance" described in Item 5. of the Declarations are either reduced or exhausted solely by payment of "loss," such insurance provided by this policy will apply in excess of the reduced underlying limit or, if all underlying limits are exhausted, will apply as "underlying insurance" subject to the same terms, conditions, definitions and exclusions of the "first underlying insurance," except for the terms, conditions, definitions and exclusions of this policy.





**City of Santa Fe**  
Treasury Department  
200 Lincoln Ave.  
Santa Fe, New Mexico 87504-0909  
505-955-6551

## BUSINESS REGISTRATION

**Business Name:** EXERPLAY INC  
DBA: EXERPLAY INC

**Business Location:** PO BOX 1160  
cedar crest, NM 87008

**Owner:** EXERPLAY INC

**License Number:** 229673

**Issued Date:** April 19, 2022

**Expiration Date:** April 19, 2023

**CRS Number:** 02159406006

**License Type:** Business License - Renewable

**Classification:** Out of Jurisdiction Contractor -  
General

**Fees Paid:** \$10.00

EXERPLAY INC  
PO BOX 1160  
CEDAR CREST, NM 87008

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.  
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY  
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO  
COMMENCEMENT OF ANY CONSTRUCTION OR THE  
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO  
OTHER BUSINESSES OR PREMISES.

**TO BE POSTED IN A CONSPICUOUS PLACE**



# City of Santa Fe

## Real Estate Summary of Contracts, Agreements, Amendments & Leases

### Section to be completed by department

1. Munis Contract # 3203866

Contractor: Exerplay, Inc.

Description: Installation and modifications to trash and recycling cans at Las Acequias Park, SWAN Park and Franklin Miles Park. Contractor will also deliver materials for future modifications to receptacles at Ragle Park

Contract  Agreement  Lease / Rent  Amendment

Term Start Date: TBD Term End Date: 6/30/2023

Approved by Council Date: \_\_\_\_\_

### Contract / Lease:

Amendment # \_\_\_\_\_ to the Original Contract / Lease # \_\_\_\_\_

Increase/(Decrease) Amount \$ \_\_\_\_\_

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

### Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

3. Procurement History: \_\_\_\_\_

*Andy Hopkins* Feb 6, 2023  
Purchasing Officer Review: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: Procured via current SWPA.

4. Funding Source: General Fund/100 Org / Object: 1001450/572500

*Andy Hopkins* Feb 6, 2023  
Budget Officer Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: \_\_\_\_\_

Staff Contact who completed this form: Skyler Nielsen Phone # 505-460-6688

Email: smnielsen@santafenm.gov

### To be recorded by City Clerk:

Clerk # \_\_\_\_\_

Date of Execution: \_\_\_\_\_



# CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Exerplay, Inc.

Procurement Title: Trash/Recycle can upgrades at SWAN, Las Acequias and Franklin Miles Parks

Procurement Method: State Price Agreement  Cooperative  Sole Source  Other

Exempt  Request For Proposal (RFP)  Invitation To Bid (ITB)  Contract under 60K  Contract over 60K

Department Requesting Public Works Staff Name Skyler Nielsen

### Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

### REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING\*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Skyler Nielsen Parks Operations Manager 1/25/2023

Department Rep Printed Name (attesting that all information included) Title Date

 Contracts Supervisor Feb 6, 2023

Purchasing Officer (attesting that all information is reviewed) Title Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.

**Signature:** *Melissa McDonald*

**Email:** [mamcdonald@ci.santa-fe.nm.us](mailto:mamcdonald@ci.santa-fe.nm.us)












# 23-0061 Exerplay, Inc. PW POS GB

Final Audit Report

2023-02-28

Created:	2023-02-24
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAHAH1MAZLpn6dzOJ-3mL3RdfubdTLW53rOV

## "23-0061 Exerplay, Inc. PW POS GB" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)  
2023-02-24 - 0:25:37 AM GMT- IP address: 63.232.20.2
-  Document emailed to ekoster@santafenm.gov for signature  
2023-02-24 - 0:26:42 AM GMT
-  Email viewed by ekoster@santafenm.gov  
2023-02-24 - 4:25:39 AM GMT- IP address: 104.47.64.254
-  Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster  
2023-02-24 - 4:29:36 AM GMT- IP address: 73.42.116.51
-  Document e-signed by Emily K. Oster (ekoster@santafenm.gov)  
Signature Date: 2023-02-24 - 4:29:38 AM GMT - Time Source: server- IP address: 73.42.116.51
-  Document emailed to Alan Webber (amwebber@santafenm.gov) for signature  
2023-02-24 - 4:29:40 AM GMT
-  Email viewed by Alan Webber (amwebber@santafenm.gov)  
2023-02-24 - 4:30:11 AM GMT- IP address: 104.28.48.218
-  Document e-signed by Alan Webber (amwebber@santafenm.gov)  
Signature Date: 2023-02-24 - 4:36:45 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature  
2023-02-24 - 4:36:47 PM GMT
-  Email viewed by Kristine Mihelcic (kmmihelcic@santafenm.gov)  
2023-02-28 - 4:14:36 PM GMT- IP address: 174.205.37.92
-  Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)  
Signature Date: 2023-02-28 - 4:14:51 PM GMT - Time Source: server- IP address: 174.205.37.92



✔ Agreement completed.

2023-02-28 - 4:14:51 PM GMT



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