

**RECOVERY FUNDS SUBRECIPIENT  
CONTRACT BETWEEN CITY OF SANTA FE AND NV5, Inc.**

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and NV5, Inc. herein after referred to as the "Contractor."

**RECITALS**

**WHEREAS**, the City, as a recipient of a State and Local Fiscal Recovery Funds (SLFRF) award, has substantial discretion to use the award funds in the ways that best suit the needs of the City if such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure;

**WHEREAS** this Contract falls within the first statutory category;

**WHEREAS**, recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds, Coronavirus State and Local Fiscal Recovery Funds Compliance and Reporting Guidance are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable;

**WHEREAS**, the Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate;

**WHEREAS**, Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient; and

**WHEREAS** NV5, Inc. understands that this contract represents a subaward of SLFRF funds, agrees to maintain records to satisfy all compliance requirements for use of SLFRF, and agrees to all reporting requirements for expenditures of SLFRF funds.

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "Subrecipient" means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. 2 C.F.R. § 200.1

D. "You" and "your" refers to **NV5, Inc.** "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform the work as outlined in Exhibit "A", attached hereto and incorporated herein by reference.

3. **Compensation**

A. Payment. The City shall pay to the Contractor in full payment for services satisfactorily performed in the sum of thirty eight thousand nine hundred ninety three dollars (\$38,993.00). The total compensation under this Agreement shall not exceed \$38,993.00 including New Mexico gross receipts tax. 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 services, in excess of the total compensation amount being provided.

B. Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written

certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. The contractor may use SLFRF funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, if the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the subrecipient prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule. Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).

4. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City and end **two years** from that date. In no event will the term exceed the duration allowed by statute, NMSA 1978, § 13-1-150.

5. **Default and Force Majeure**

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

6. **Termination**

A. **Grounds.** The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. **Notice; City Opportunity to Cure.**

1) Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *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.*

## 7. 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 Paragraph 7 herein, or to agree to the reduced funding.

## 8. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's 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 personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

## 9. 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.

10. **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.

11. **Non-Collusion**

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

12. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

13. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

14. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

15. **Records and Audit**

During the term of this Agreement and for five years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. 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.

16. **Appropriations**

The terms of this Agreement, and any orders placed under it, 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 legislature, this Agreement, and any orders placed under it, shall terminate 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.

17. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. 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.

18. **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 prior written approval by the City.

19. **Conflict of Interest**

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. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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 Paragraph 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 Paragraph 20 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

Paragraph 20 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.

20. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

21. **Scope of Agreement; 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 agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. **Notice**

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 bribes, gratuities and kickbacks.

23. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure 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.

24. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor

shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

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. **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, § 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.

27. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

28. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

29. **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.

30. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

31. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

32. **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.

33. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

34. **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.

35. **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.

36. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- 1) give the Contractor prompt written notice within 48 hours of any claim;
- 2) allow the Contractor to control the defense of settlement of the claim; and
- 3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- 1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
  - 2) replace or modify the product or service so that it becomes non-infringing;
- or,
- 3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

37. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

38. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

39. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

40. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City:                   Melissa A. McDonald, Parks and Open Space Division Director  
                                      1142 Siler Rd., Bldg. C  
                                      Santa Fe, NM 87505  
                                      mamcdonald@santafenm.gov

To the Contractor:       NV5, Inc.  
                                      Attn: Joy Griffin  
                                      2460 W. 26<sup>th</sup> Avenue; Suite D-360  
                                      Denver, CO 80211

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

To the Contractor:       NV5, Inc.  
                                      Attn: Joy Griffin  
                                      2460 W. 26<sup>th</sup> Avenue; Suite D-360  
                                      Denver, CO 80211

41. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

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:

John Blair  
John Blair (Sep 25, 2023 11:04 MDT)

JOHN BLAIR, CITY MANAGER

DATE: Sep 25, 2023

CONTRACTOR:

NV5, Inc.

Adam Yulish  
NAME

Managing Director  
TITLE

DATE: April 13, 2023

CRS# \_\_\_\_\_

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

ATTEST:

Kristine Bustos Mihelcic  
KRISTINE BUSTOS MIHELIC, CITY CLERK  
XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez  
Marcos Martinez (Apr 6, 2023 14:14 MDT)  
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster  
Emily K. Oster (Sep 22, 2023 17:56 MDT)  
EMILY OSTER, FINANCE DIRECTOR

Org.Name/Org.# 2404150/572970 AH



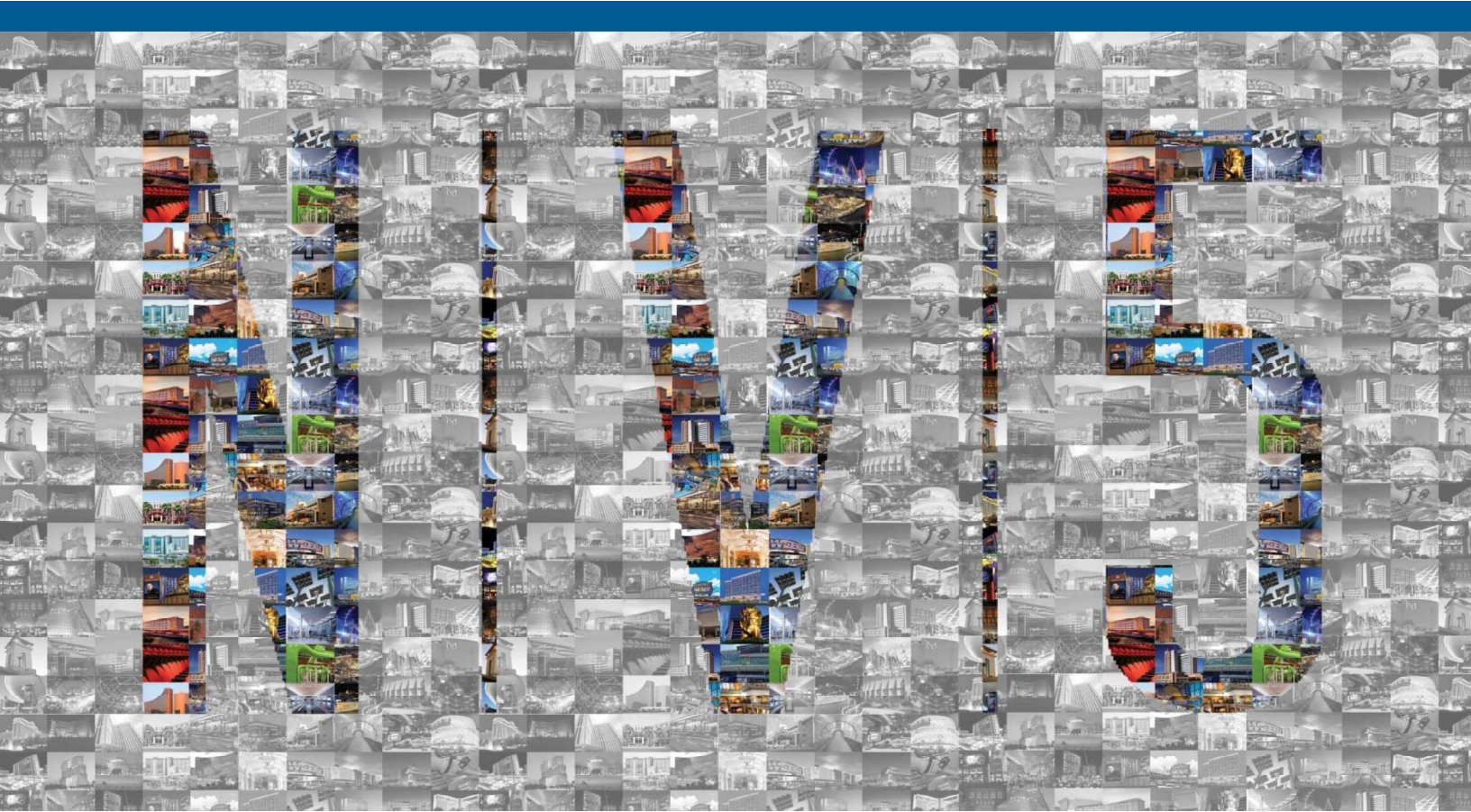
# EXHIBIT A

## PROPOSAL FOR PROJECT & CONSTRUCTION MANAGEMENT SERVICES CITYWIDE TRAIL CRACK SEAL – CITY OF SANTA FE, NM

August 23, 2023

Prepared For:

Melissa McDonald  
**Parks and Open Space Director**  
City of Santa Fe



N|V|5

223 N. Guadalupe Street #869  
Santa Fe, NM 87501  
Contacts:  
Joy Griffin, Project Director - 303.993.9001  
Doug Harned, Project Manager - 505.274.9064



August 23, 2023

Melissa McDonald  
**Parks and Open Space Director**  
City of Santa Fe

**RE: CITYWIDE TRAIL CRACK SEAL  
CITY OF SANTA FE, NM**

Dear Ms. McDonald,

Thank you for considering NV5 to provide Project and Construction Management Services for the Citywide Trail Crack Seal maintenance project. These Project and Construction Management services are covered under NV5's existing On-Call Professional Services Contract with the City of Santa Fe, Item# 20-0511.

We are excited for the opportunity to support the City on this project and understand the project scope consists of:

- Coordinate with a City "on-call" contractor to provide scope, solicit a proposal, and assist with the coordination of the construction agreement.
- Provide crack and sealing on existing City trails per priorities provided by City staff.

Thank you again for considering us for this opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Griffin'.

Joy Griffin  
Project Director  
NV5, Inc.  
Phone: 303.993.9001 | Email: Joy.Griffin@NV5.com



## SCOPE OF SERVICES

Below are our proposed Project and Construction Management services for the Citywide Trail Crack Seal project. Scope and assumptions are based on conversations with City of Santa Fe.

### 1. Project Management

- Review the crack fill priority list and perform a field review of same to create a detailed scope of work for the on-call contractor (selected by City staff) to provide a quote.
- Assist City staff with the creation of the contractor's agreement for work.
- Facilitate and attend bi-monthly (online) construction meetings, project communications and documentation with project team.
- Coordinate assembly of necessary documentation to assure ARPA funding.
- Track budget as project progresses and notify City staff of any issues which may arise.
- Review contractor's pay applications and lien waivers and coordinate City approvals and payments.

### 2. Construction Management

- Ensure contractor is providing appropriate public notification for trail work.
- Conduct one (1) weekly field inspection/observation for duration of project construction. The purpose of the inspection is to verify progress, provide a general visual inspection of the work, and ensure public safety precautions appear to be appropriate.

### 3. Project Close-out

- Work with contractor to compile all project documents for City's records, including those required for ARPA funding.
- Coordinate punch list creation and review progress to ensure completion of same.

## PROPOSED FEE

We pride ourselves on tailoring our services to each client's specific needs. We look forward to discussing your needs to make sure we have covered all your project needs. Services shall be billed monthly based on percent completion, hours completed toward Scope of Services tasks, and materials used. Below is our not-to-exceed fee schedule for the Scope of Services outlined above.

Additional services provided by NV5 which are outside the outlined Scope of Services will be invoiced per the below On-Call Professional Services Contract hourly rates, based on NV5's time expended, and costs paid by NV5. NV5 shall submit invoices based on total additional services that have been completed. All additional services will be preapproved by client prior to services being performed.

Phase	Total
Project & Construction Management	\$34,000
Reimbursable Allowance	\$2,000
<b>SUBTOTAL</b>	<b>\$36,000</b>
<b>NMGRT (8.3125%)</b>	<b>\$2,993</b>
<b>TOTAL</b>	<b>\$38,993</b>

## NOTES/ASSUMPTIONS

- Fee assumes the below project schedule and parameters. If the schedule extends, fees will be adjusted accordingly.
  - Construction Phase: April 2023 to June 2023 (2 months field construction and 1-month pre and post construction combined)
  - The above schedule represents work performed in "year 3" of the NV5 on-call agreement. Extending the project beyond June 2023 may result in a necessary adjustment to include "year 4" rates.
- Construction inspection/observation will average 4 hours per week which includes travel time to the site. Staff may be traveling from NV5's Albuquerque or Santa Fe offices and mileage will be billed accordingly at current IRS rate. These expenses will be billed at cost.
- We expect reimbursable expenses to be limited to mileage and minor office materials. These expenses will be billed at cost.
- Proposal assumes bi-monthly 1 hour construction progress meeting to be held virtually. For virtual meetings travel time and expenses will not be billed.
- Current applicable NMGRT has been added; however, should the NMGRT rate change the appropriate adjustment will be made, and if necessary, a Change Order provided.**

## HOURLY RATES

Below is a table of our hourly rates for project management services under NV5's on-call Professional Services Contract with the City of Santa Fe, Item# 20-051

Team Member	Year 3 Rate	Team Member	Year 4 Rate
Project Director (PM6)	\$190.96	Project Director (PM6)	\$196.69
Project Manager 3 (X3)	\$169.74	Project Manager 3 (X3)	\$174.84
Project Manager II (PM4)	\$148.53	Project Manager II (PM4)	\$152.98

We sincerely appreciate the continued opportunity to work with the City of Santa Fe on this project. Please contact me at 303.993.9001 or via email at Joy.Griffin@NV5.com with any questions or comments regarding this proposal.



# City of Santa Fe, New Mexico

## Memorandum



**DATE:** April 19, 2023

**TO:** John Blair, City Manager

**VIA:**

Regina Wheeler, Public Works Department Director

Melissa A. McDonald, Parks and Open Space Director *MAM*

**FROM:** Scott A. Overlie, Parks and Open Space, Project Administrator *SAO*

SAO

### **ACTION:**

Request for approval of the Recovery Funds Subrecipient Contract with NV5, Inc. in the amount of \$38,993.00 inclusive of NM GRT for on-call design and construction management of the Citywide Trail Crack Seal maintenance at various trail locations within the City of Santa Fe.

### **BACKGROUND AND SUMMARY:**

American Rescue Plan Act funds were appropriated in the amount of \$1,300,000.00 to Parks and Open Space Division for Trail Improvements, Governing Body approval April 27, 2022, in response to the COVID 19 pandemic. Outdoor activity during the pandemic helped decrease the transmission of COVID-19 and as such, brought forward the need to repair and improve trails. NV5, Inc. will manage the project through the following actions:

#### **1. Community & Stakeholder Engagement**

- Engage with the community to determine the project needs.

#### **2. Pre-construction**

- Obtain quote from City selected on-call contractor to perform the work determined via stakeholder outreach.
- Ensure compliance with ARPA requirements for all pre-construction activities.

#### **3. Construction**

- Facilitate project management with Contractor and Project Team.
- Ensure compliance with ARPA requirements for all construction activities.

Project start date is expected in May 2023 with expected completion date late fall of 2023, meeting the ARPA deadline to complete or encumber funding by December 30, 2024.

### **FUNDING SOURCE:**

**Munis Fund Name/Number:** Community Development / 240

**Munis Org Name/Number:** Community Development Grant – PTW / 2404150

**Munis Object Name/Number:** WIP Construction / 572970

### **ATTACHMENTS:**

Contract

Proposal

RFP On-call Contract 20-0511

Horizons Letter of declination

Reviewed By:

*Halona Crowe*

Halona Crowe

Business Operations Manager



# City of Santa Fe

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

### Section to be completed by department

1. Munis Contract # \_\_\_\_\_

Contractor: **NV5, Inc.**

Description: \_\_\_\_\_

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☐

Term Start Date: **TBD**

Term End Date: **2 years from start date**

☐ 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:** \_\_\_\_\_

*Johanna Lavato Montano*

Purchasing Officer Review:

Aug 31, 2023

Date:

Comment & Exceptions: allocating ARPA funds from On-call contract 20-0511 for said project

4. **Funding Source:** **ARPA funds**

**Org / Object:** **2404150/572970**

*Andy Hopkins*

Andy Hopkins 08/11/2023 15:42 MDT

Budget Officer Approval:

Jul 11, 2023

Date:

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

Staff Contact who completed this form: **Scott A. Overlie** Phone # **505-231-6194**

Email: **saoverlie@santafenm.gov**

To be recorded by City Clerk:

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

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

## CITY OF SANTA FE

### PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and NV5, Inc., hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

A. The Contractor shall provide On-Call Project Management/Owner Representative Services for the City of Santa Fe including, but not limited to:

**1) COMPLIANCE**

- a) Provide management of projects in compliance with City's processes, policies, rules, regulations and goals.
- b) Ensure all work is performed safely and in accordance with all safety policies, procedures and regulations. Verify that contractors adhere to all safety policies, procedures and regulations.
- c) Obtain or verify that contractors obtain all federal, state, and local regulatory approvals and permits including, but not limited to, planning and zoning, environmental remediation, historic preservation, accessibility, energy performance, etc.

**2) PROCUREMENT AND CONTRACT ADMINISTRATION**

- a) Engage contractors as appropriate for planning, development, design, permitting and construction of the project, program or initiative.
- b) Execute procurement, contracting, administration and oversight activities in accordance with all policies, rules, regulations, guidelines, direction and best practices.
- c) Monitor, oversee and verify work by contractors, including verification of acceptance of any work included in monthly invoices.
- d) Identify the need for any third party verification or testing and secure those services.

**3. COMMUNICATION AND COORDINATION**

- a) Ensure that appropriate public engagement and communication is executed throughout the project. Plan and execute all communication and public engagement activities to educate and gather input from range of affected stakeholders.
- b) Provide timely responses to public and stakeholder inquiries in accordance with agreed upon communication channels and messaging.
- c) Timely and frequent communication with key stakeholders of project progress and critical issues.



- d) Participate as appropriate and directed in public and meetings of the Governing Body. Develop communication materials as needed.
- e) During project development and design, incorporate plans to minimize impact on operations, customer services and staff during construction. Ensure that contract terms require contractors to deliver services in accordance with plans to minimize impacts on customer services, operations and staff.
- f) Coordinate regularly throughout planning, development and construction with customer department staff to minimize impact on operations and ensure safe environment for customers and staff. Communicate regularly about project progress including holding regular in person coordination meetings.
- g) Maintain awareness of and coordinate with other projects to manage cumulative impacts.
- h) Identify and communicate risks and opportunities.

#### 4) PROJECT PLANNING AND DESIGN

- a) Assist with identification and pursuit of funding and partnerships to fulfill project goals.
- b) Assist with capital project planning including but not limited to assessment, estimating, cataloging, space planning and master planning.
- c) Research property ownership, plats, titles, easements, right-of-way, environmental, archeological or NEPA requirements and other related designations as appropriate.
- d) Lead the planning and design process to ensure the final project meets goals, budget and schedule. Engage in and oversee value engineering, when appropriate.
- e) Develop and maintain updated project schedule that shows milestones and critical path.
- f) Identify and communicate opportunities to modify scope to realize economic, political and or operational advantage.

#### 5) REPORTING AND DOCUMENTATION

- a) Complete and update on a monthly basis the attached Project Status Report (EXHIBIT "A") to track the actual project progress with planned values.
- b) Provide City with a monthly construction progress report regarding the work, cost and schedule as well as documentation of decisions, issues and resolutions throughout the project.
- c) Organize all project documentation for easy accessibility by City staff.
- d) Manage project closeout to include entering new facilities and systems into asset management software, addition to insurance policies, inclusion in fire and safety system monitoring, training of users and maintenance personnel, filing documentation, budget closeout, etc.

#### B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

- 1) Successful, timely and cost effective completion of City capital infrastructure projects and initiatives.
- 2) Effective management of any type of infrastructure projects including but not limited to planning, development, design, repair and/or construction of roads, sidewalks, trails, storm water and drainage infrastructure, facilities, parks, utilities and all types of infrastructure.
- 3) Effectively manage any or all phases and aspects of projects including but not limited to project planning and development, procurement, contract approval, public engagement, Council/Committee processes, safety and regulatory compliance, land acquisition, contractor coordination and oversight, project status reporting, project scheduling, estimating, contract management, approving invoices and preparing and delivering public presentations and reports.
- 4) Oversee multiple projects at one time and efficiently perform owner representative role and coordinate successfully the work of other project managers.

2. **Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, a sum not to exceed One Million Dollars (\$1,000,000.00), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling Eighty-Four Thousand Three Hundred Seventy-Five Dollars (\$84,375.00) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed One Million Eighty-Four Thousand and Three Hundred Seventy-Five Dollars (\$1,084,375.00).** This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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 in accordance with the Unit Rate Schedule, as described in EXHIBIT "B", attached hereto and made a part thereof. 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 **December 31, 2024** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of 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. Assignment.**

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

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

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

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

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

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

**13. Amendment.**

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

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

**14. Merger.**

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

**15. Penalties for violation of law.**

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



**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Workers Compensation.**

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

**19. Professional Liability Insurance.**

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

**20. Other Insurance.**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

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

B. **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.

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

**21. Records and Financial Audit.**

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

**22. Indemnification.**

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

**23. New Mexico Tort Claims Act.**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**24. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**25. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**26. Notices.**

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

To the City: John Romero, P.E.  
Engineering Division Director  
Public Works Department  
City of Santa Fe  
500 Market St., Suite 200  
Santa Fe, NM 87501  
E-mail: jjromero1@santafenm.gov

To the Contractor: John Bills, LEED® AP  
Senior Vice President  
NV5, Inc.  
2650 18<sup>th</sup> Street, Suite 202  
Denver, CO 80211  
E-mail: John.Bills@nv5.com

**27. Authority.**

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

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: Oct 21, 2020

CONTRACTOR:



JOHN BILLS, LEED® AP  
Senior Vice President

DATE: 9/8/2020  
CRS# 03-326654-00-09  
Registration # 228014

ATTEST:

*Yolanda Y. Vigil*

\_\_\_\_\_  
YOLANDA Y. VIGIL  
CITY CLERK

GB Mtg 09/30/2020

GC  
GC

CITY ATTORNEY'S OFFICE:

*Marcos Martinez*

\_\_\_\_\_  
Marcos Martinez (Jul 27, 2020 15:10 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Mary McCoy*

\_\_\_\_\_  
MARY MCCOY, FINANCE DIRECTOR

\_\_\_\_\_  
Organization/ Object/ Project ID

## Project Description:

[illegible][illegible][illegible]

**Actions: Carry out the following**

## EXHIBIT B: UNIT RATE SCHEDULE

N | V | 5

		Year 1	Year 2	Year 3	Year 4
Project Management / Owner's Representative					
PM1	Admin Support	80.00	82.40	84.87	87.42
PM2	Assistant Project Manager	105.00	108.15	111.39	114.74
PM3	Project Manager I	125.00	128.75	132.61	136.59
PM4	Project Manager II	140.00	144.20	148.53	152.98
PM5	Senior Project Manager	160.00	164.80	169.74	174.84
PM6	Project Director	180.00	185.40	190.96	196.69
PM7	Scheduler	120.00	123.60	127.31	131.13
PM8	Senior Scheduler	145.00	149.35	153.83	158.45
PM9	Cost Estimator	125.00	128.75	132.61	136.59
PM10	Senior Cost Estimator	150.00	154.50	159.14	163.91
PM11	Principal	210.00	216.30	222.79	229.47

### Civil Professionals

P1	Design Professional I	82.00	84.46	86.99	89.60
P2	Design Professional II	90.00	92.70	95.48	98.35
P3	Staff Professional	100.00	103.00	106.09	109.27
P4	Staff Engineer	116.00	119.48	123.06	126.76
P5	Project Engineer	132.00	135.96	140.04	144.24
P6	Senior Project Engineer	152.00	156.56	161.26	166.09
P7	Senior Engineer	170.00	175.10	180.35	185.76
P8	Principal Engineer	192.00	197.76	203.69	209.80
P9	Division Manager	212.00	218.36	224.91	231.66

### Mechanical/Electrical Professionals

M1	Design M/E Professional I	90.00	92.70	95.48	98.35
M2	Design M/E Professional II	98.00	100.94	103.97	107.09
M3	Staff M/E Professional	110.00	113.30	116.70	120.20
M4	Staff M/E Engineer	126.00	129.78	133.67	137.68
M5	Project M/E Engineer	146.00	150.38	154.89	159.54
M6	Senior M/F Project Engineer	168.00	173.04	178.23	183.58
M7	Senior M/E Engineer	188.00	193.64	199.45	205.43
M8	Principal M/E Engineer	212.00	218.36	224.91	231.66
M9	Division Manager	232.00	238.96	246.13	253.51

## Architecture Professionals

A1	Architectural Staff Intern 1	70.00	72.10	74.26	76.49
A2	Architectural Staff Intern 2	80.00	82.40	84.87	87.42
A3	Architectural Staff Intern 3	90.00	92.70	95.48	98.35
A4	Architect 1	106.00	109.18	112.46	115.83
A5	Architect 2	120.00	123.60	127.31	131.13
A6	Architect Sr	140.00	144.20	148.53	152.98
A7	Architect Principal	160.00	164.80	169.74	174.84
A8	Architect Sr Principal	184.00	189.52	195.21	201.06
A9	Division Manager	202.00	208.06	214.30	220.73

		Year 1	Year 2	Year 3	Year 4
Project Manager					
X1	Project Manager 1	140.00	144.20	148.53	152.98
X2	Project Manager 2	160.00	164.80	169.74	174.84
X3	Project Manager 3	180.00	185.40	190.96	196.69
X4	Project Manager 4	202.00	208.06	214.30	220.73

## Technicians

T1	Technical, Designer	46.00	47.38	48.80	50.27
T2	Technical, Staff	66.00	67.98	70.02	72.12
T3	Technical, Project	80.00	82.40	84.87	87.42
T4	Technical, Senior	102.00	105.06	108.21	111.46
T5	Field Rep-Inspector Sr	118.00	121.54	125.19	128.94

### Survey

T1	Survey Field Technician 1	46.00	47.38	48.80	50.27
T2	Survey Field Technician 2	66.00	67.98	70.02	72.12
T3	Survey Office Technician 3	80.00	82.40	84.87	87.42
T4	Survey Party Chief 1	102.00	105.06	108.21	111.46
T5	Survey Party Chief 2	118.00	121.54	125.19	128.94
X2	Director, Surveying/Mapping 2	160.00	164.80	169.74	174.84

### Administrative Salary

B1	HR / Acct /Marketing Manager	86.00	88.58	91.24	93.97
B2	Sr. HR / Acct Manager	94.00	96.82	99.72	102.72
B4	Asst Controllers / Contract Reps	124.00	127.72	131.55	135.50
B5	Project Managers	144.00	148.32	152.77	157.35
B6	Controller	164.00	168.92	173.99	179.21

### Administrative Hourly

C1	Entry Level	42.00	43.26	44.56	45.89
C2	Receptionist, Acct/HR Asst.	54.00	55.62	57.29	59.01
C3	HR / Acct Coordinator / Div Admin I	62.00	63.86	65.78	67.75
C4	HR / Acct Coordinator / Div Admin II	80.00	82.40	84.87	87.42
C5	Sr. IT / HR / Acct Coordinator / Div Admin	94.00	96.82	99.72	102.72

## Direct Costs

Printing				
8.5x11 Black and White	0.10	0.10	0.10	0.10
8.5x11 Color	1.00	1.00	1.00	1.00
11x17 Black and White	0.20	0.20	0.20	0.20
11x17 Color	2.00	2.00	2.00	2.00
Plotting (per SF)	1.50	1.50	1.50	1.50
Mileage	IRS Rate	IRS Rate	IRS Rate	IRS Rate

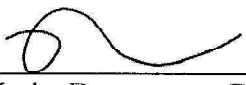


# City of Santa Fe, New Mexico

## memo

**DATE:** September 15, 2020

**TO:** Public Works Committee, Finance Committee, Governing Body

**VIA:**   
Regina Wheeler, Public Works Department Director  
John Romero, P.E., Engineering Division Director JR

**FROM:** Romella Glorioso-Moss, PhD, AICP RGM  
Projects Administrator, Roadway and Trails

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### ITEM AND ISSUE

Recommendation of approval for Professional Service Agreements for on-call project management/owner representative services with the following four (4) Contractors: Joe Cohen & Associates, Inc., Leroy Nicholas Pacheco, PE, Motiva Corporation, and NV5.

### BACKGROUND AND SUMMARY

On February 3, 2020 the Public Works Department has advertised a request for proposals (RFP# 20/17/P) for on-call project management/owner representative services to assist the City with its capital improvement projects. Seven companies responded to the RFP of which five were selected by the Evaluation Committee as follows: Joe Cohen & Associates, Inc., Leroy Nicholas Pacheco, PE, Motiva Corporation, NV5, and PBI Construction Consulting (see Exhibit A). Contract negotiation ensued in July with PBI dropping out early on the negotiation process. Of the four contractors, two are local, one located in Bernalillo and one out-of-state.

These contracts are non-renewable with term ending December 31, 2024 and a cap of \$1,000,000.00 (excluding NMGRT) per Contractor. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal to \$1,000,000.00. Availability of funds for these services will be identified and budgeted as needed. Execution of these agreements does not constitute a promise to purchase any amount of said work.

Exhibit B lists a total of 41 capital improvement projects that Contractors could work on in FY21. These projects were re-prioritized by Public Works in response to COVID 19 budget cuts which was approved by the Governing Body on July 8, 2020. As described in detail on pages 1-2 of their

contract, their Scope of Work includes but not limited to: a) ensure compliance with City, State and Federal processes, policies, rules and regulation; b) procurement and contract administration; c) communication and coordination; d) project planning and design; and e) reporting and documentation.

The Contractors' performance will be measured by: a) successful, timely and cost effective completion of City capital infrastructure projects and initiatives; b) effective management of any type of infrastructure projects; c) effectively manage any or all phases and aspects of projects; and d) oversee multiple projects at one time and efficiently perform owner representative role and coordinate successfully the work of other project managers.

### **RECOMMENDED ACTION**

The Public Works Department recommends to the Governing Body the approval for contract awards for on-call professional management and owner representative services to the following four Contractors: Joe Cohen & Associates, Inc., Leroy Nicholas Pacheco, PE, Motiva Corporation, and NV5, Inc.

ORG/OBJECT CODE: Varies by user

MUNIS CONTRACT NUMBERS: Joe Cohen & Associates, Inc. (TBD), Leroy Nicholas Pacheco, PE (TBD), Motiva Corporation (TBD), and NV5, Inc. (TBD)

#### **Attachments:**

- 1) Exhibit A Evaluation Committee Report for RFP #'20/17/P (1)
- 2) Exhibit B List of Public Works Priority Projects in FY21
- 3) Exhibit C through F: Professional Service Agreements (4)
- 4) Exhibit G: Procurement Checklist (1)
- 5) Exhibit H: Summary of Contract (1)


# GB PWD 20-0511 NVS PROJECT MNGMNT


Final Audit Report


2020-10-21


Created:	2020-10-19
By:	YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAACBxUIqLq_Ze3BDW27wBUKINywOZXDsYC


## "GB PWD 20-0511 NVS PROJECT MNGMNT" History


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2020-10-19 - 7:05:16 PM GMT


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2020-10-20 - 0:18:28 AM GMT- IP address: 104.47.64.254


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2020-10-21 - 9:29:05 PM GMT- IP address: 104.47.65.254

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Signature Date: 2020-10-21 - 9:29:45 PM GMT - Time Source: server- IP address: 63.232.20.2

 Agreement completed.

2020-10-21 - 9:29:45 PM GMT

## OVERLIE, SCOTT A.

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**From:** OVERLIE, SCOTT A.  
**Sent:** Tuesday, August 29, 2023 10:23 AM  
**To:** Joseph Perez  
**Subject:** RE: City of Santa Fe Parks Contract Opportunity

Thank you sir, Scott

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**From:** Joseph Perez <jperez@horizonsofnewmexico.org>  
**Sent:** Tuesday, August 29, 2023 10:22 AM  
**To:** OVERLIE, SCOTT A. <saoverlie@santafenm.gov>  
**Subject:** Re: City of Santa Fe Parks Contract Opportunity

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

We will respectfully decline this opportunity  
Joseph Perez  
Regional Marketing Manager  
Horizons of New Mexico  
6121 Indian School Rd. NE, Suite 102  
Albuquerque, NM 87110

office phone: (505) 345-1540  
email: jperez@horizonsofnewmexico.org  
web: www.horizonsofnewmexico.org

Sent from my Verizon, Samsung Galaxy smartphone  
Get [Outlook for Android](#)

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**From:** OVERLIE, SCOTT A. <saoverlie@santafenm.gov>  
**Sent:** Tuesday, August 29, 2023 9:56:01 AM  
**To:** jperez@horizonsofnewmexico.org <jperez@horizonsofnewmexico.org>  
**Subject:** City of Santa Fe Parks Contract Opportunity

Good morning Mr. Perez, the City of Santa Fe is looking for project management services for citywide crack seal and asphalt management. Please let me know if you are interested in this project. Below is listed the scope of services we are looking for. Thank you very much, Scott Overlie

## SCOPE OF SERVICES

City wide trails maintenance and improvements, Owners Representation and Construction Services.

1. Project Management

- Review the crack fill priority list and perform a field review of same to create a detailed scope of work for the on-call contractor (selected by city staff) to provide a quote.
- Assist City staff with the creation of the contractor's agreement for work.
- Facilitate and attend bi-monthly(online) construction meetings, project communications and documentation with project team.
- Coordinate assembly of necessary documentation to assure ARPA funding.
- Track budget as project progresses and notify City staff of any issues which may arise.
- Review Contractors pay applications and lien waivers and coordinate City approvals and payments.

## 2. Construction Management

- Ensure contractor is providing appropriate public notification for trail work.
- Conduct one weekly field inspection/observation for duration of project construction. The purpose of the inspection is to verify progress, provide a general visual inspection of the work, and ensure public safety precautions appear to be appropriate.

## 3. Project Close-out

- Work with Contractor to compile all project documents for City's records, including those required for ARPA funding.
- Coordinate punch list creation and review progress to ensure completion of same.

Scott Overlie, Project Administrator  
City of Santa Fe Parks Division  
1142 Siler Road, Bldg. C  
Santa Fe, NM 87505  
505-231-6194
















# 23-0559 NV5, Inc.

Final Audit Report

2023-09-26

Created:	2023-09-12
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAm7eQUO35h8qAFLX36qTa-lzMSoyNF7GO

## "23-0559 NV5, Inc." History

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Agreement completed.

2023-09-26 - 0:28:37 AM GMT