



Date: December 4, 2024

To: Randy Randell, Interim City Manager

Via: James Harris, Airport Director 

From: James Garduño, Airport Project Manager 

Subject: Santa Fe Regional Airport Website & Design

Vendor Name: Xynergy Inc.

Vendor Number: 8961

ITEM AND ISSUE:

The Santa Fe Regional Airport respectfully requests your review and approval for General Services Contract with Xynergy Inc. in the total amount of \$59,276.20 including NMGR to create and perform Website, Design, Development, Hosting and Support; (Xynergy Inc./Santa Fe Regional Airport).; James Garduño, Project Manager, jdgarduno@santafenm.gov, 505-670-3232; James Harris, Airport Manager, jcharris@santafenm.gov, 505-955-2901


Action Requested: Approval for General Services Contract with Xynergy Inc. for new airport website.

BACKGROUND AND SUMMARY:

Airport has made major upgrades around the airport facilities to better the user experience. The Santa Fe Regional Airport does not have a dedicated website. An additional upgrade will be a dedicated website for the Santa Fe Airport. With this upgrade the airport will provide a better customer experience. The airport has received a grant SAF-25-01 that will cover 90% of the cost for the new website.

PROCUREMENT METHOD:

This work is being procured via NM Statewide Price Agreement (SWPA) # 30-00000-23-00080DW, which expires on February 8, 2028.

Chief Procurement Officer Approval:  Travis Dutton-Leyda (Dec 27, 2024 10:34 MST) **Date:** Dec 27, 2024

Comment/Exceptions: NMSA 1978, Section 13-1-129

Supporting Information:

Supporting Information:

CONTRACT NUMBER:

The FY25 Munis contract number is 3250228

\$\$\$\$\$ SOURCE/REVENUE: ☒Expense ☐Revenue

The funding source is:

Fund Name/Number: Airport Fund/545

Munis Org Name/Number: Airport Operating Funds/5456050

Munis Object Name/Number: Services contracts/510310

If the project is grant funded? List grant award number: SAF-25-01

Grant Manager / Accounting Officer Approval: Erika Lujan Erika Lujan (Jan 6, 2025 13:12 MST) **Date:** Jan 6, 2025

Comment/Exceptions: Erika Lujan

Project Ledger #: AIR2554504

Budget Officer Approval: Andy Hopkins **Date:** Dec 4, 2024

Comment/Exceptions: _____

CAPITAL ASSET (will this procurement result in a tangible item that costs more than \$5,000?):

☐Yes | ☒ No

(if known): _____

Repair or Replacement of Existing Equipment:

☐Yes | ☒ No

If yes -> ☐Repair | ☐ Replacement

Please explain: _____

Capital Project:

(New and improvement projects that are going to cost \$10,000 or more)

☐ Yes | ☒ No


Project Ledger #: _____

Anticipated length of project: _____

Asset Manager Approval: _____ **Date:** _____

Comment/Exceptions: _____

Department Approvals:IT Components: ☒ Yes | ☐ NoVehicles: ☐ Yes | ☒ NoFacilities, Furniture, Fixtures, Equipment: ☐ Yes | ☒ No

Approval:  Eric Candelaria (Jan 6, 2025 16:17 MST) **Title:** Director, ITT **Date:** Jan 6, 2025
Approval: _____ **Title:** _____ **Date:** _____
Comment & Exceptions: _____

Department Contract Administrator Contact Info:

James Garduño, Project Manager

505-670-3232

jdgarduno@santafenm.gov

ATTACHMENTS:

Vendor's Quote

Certificate of Liability Insurance

General Services Contract

CPO Determination

NM Statewide Price Agreement (SWPA)

Item# 25-0029
Munis Contract# 3204607
SWPA # 30-00000-23-00080DW

**CITY OF SANTA FE
GENERAL SERVICES CONTRACT**

Software

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

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 Contract and the price for each. Product and service descriptions may be amended with the prior approval of the Contract 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. "You" and "your" refers to **(Xynergy, Inc.)**. "We," "us" or "our" refers to the City and whose accounts are created under this Contract.

2. **Scope of Work**

A. The Contractor shall perform New Website Design, Development, Hosting and Support for the Santa Fe Regional Airport. See attached proposal from Xynergy, Inc. marked **Exhibit "A"** hereto and made a part thereof.

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 Website, Design, Development, Hosting and Support		\$59,276.20

The total compensation under this Contract shall not exceed **\$59,276.20** including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Contract are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
- B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Contract shall terminate on three (3) years from the date of final signature. The City reserves the right to renew this contract on an annual basis by mutual agreement not to exceed a total of ten (10) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

6. **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.

7. **Termination**

A. **Grounds.** The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

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 Contract 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 Contract 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 Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 17, "Appropriations", of this Contract.

C. **Liability.** Except as otherwise expressly allowed or provided under this Contract, 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 Contract. 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 CONTRACT.***

8. **Amendment**

A. This Contract 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 Contract 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 Contract, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **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 Contract. 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.

10. **Assignment**

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

11. **Subcontracting**

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

12. **Non-Collusion**

In signing this Contract, 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.

13. **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.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Contract 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.

15. **Condition of Proposed Items**

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

16. **Records and Audit**

During the term of this Contract and for three 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 Contract shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Contract, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the legislature, this Contract, 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

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

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and,

during the term of this Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract. 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 Contract, will continue to comply with, and that this Contract 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 Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, 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 Contract 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 Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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

21. **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.

22. **Scope of Contract ; Merger**

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

23. **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.

24. **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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **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.

26. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Contract, 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 Contract, 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 Contract.

28. **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 Contract or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Contract has been procured pursuant to a request for proposals, this Contract 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 Contract, 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 Contract in reverse chronological order; (2) the Contract, 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.

30. **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 Contract may be terminated by the City.

31. **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.

32. **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 Contract. 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 Contract requires. The City has the right to inspect and test all services contemplated under this Contract to the extent practicable at all times and places during the term of the Contract. 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 Contract, the City may require the Contractor to re-perform the services in conformity with the

requirements of this Contract 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 Contract; 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 Contract, 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.

33. **Insurance**

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

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

B. Broader Coverage and Limits. The insurance requirements under this Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Contract 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.

34. **Impracticality of Performance**

A party shall be excused from performance under this Contract 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.

35. **Invalid Term or Condition**

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

36. **Enforcement of Contract**

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

37. **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 Contract 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 Contract, 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.

38. **Survival**

The Contract paragraphs titled "Patent, Copyright, Trademark, and Trade Secret

Indemnification; Indemnification; and Limit of Liability” shall survive the expiration of this Contract. Software licenses, leases, maintenance and any other unexpired Contracts that were entered into under the terms and conditions of this Contract shall survive this Contract.

39. **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 Contract, 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 Contract. However, the disclosure will be considered in the determination of the Contractor’s responsibility and ability to perform under this Contract. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Contract pursuant to the conditions set forth in Paragraph 7 of this Contract.

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 Contract. 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.

40. **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 of time 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 Contract.

41. **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:
James Garduno, Project Administrator
City of Santa Fe
121 Aviation Drive, Santa Fe, NM 87507
505-670-3232
jdgarduno@santafenm.gov

To the Contractor:
Xynergy, Inc.
315-A Alameda Blvd NE
Albuquerque NM 87113
505-557-7780
sales@xynergy.com

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:
Xynergy, Inc.
315-A Alameda Blvd NE, Albuquerque NM 87113 505-557-7780 sales@xynergy.com

42. **Succession**

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

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

CITY OF SANTA FE:


Randy Randell (Jan 24, 2025 16:04 MST)

Randy Randell, Interim City Manager *JM*

~~JOHN BLAIR CITY MANAGER~~

DATE: Jan 24, 2025

CONTRACTOR:

Xynergy, Inc. / Consumer51



ARIJIT BANERJEE, CEO

DATE: 3/18/24

CRS# 02481831003

Registration # 232219

ATTEST:


ANDREA SALAZAR (Jan 24, 2025 13:18 MST)

~~GERALYN CARDENAS, INTERIM CITY CLERK~~

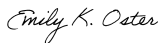
xiv

CITY ATTORNEY'S OFFICE:


Kevin L. Nault (Sep 16, 2024 16:51 MDT)

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



EMILY OSTER, FINANCE DIRECTOR



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/09/2024

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 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).

PRODUCER FAILSAFE ADVISERS LLC 39427395 1012 N BETHLEHEM PIKE LOWER GWYNEDD PA 19002	CONTACT NAME:	
	PHONE (215) 942-4880	FAX
	(A/C, No, Ext):	
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC#	
	INSURER A : Twin City Fire Insurance Company 29459	
INSURED CONSUMER 51 LLC , XYNERGY LLC 630 FREEDOM BUSINESS CTR DR KING OF PRUSSIA PA 19406-1331	INSURER B : Hartford Fire and Its P&C Affiliates 00914	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY			39 SBA AD1620	05/01/2024	05/01/2025	EACH OCCURRENCE \$2,000,000
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000
	General Liability						MED EXP (Any one person) \$10,000
							PERSONAL & ADV INJURY \$2,000,000
							GENERAL AGGREGATE \$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$4,000,000
	POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						
	OTHER:						
A	AUTOMOBILE LIABILITY			39 SBA AD1620	05/01/2024	05/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000
	ANY AUTO						BODILY INJURY (Per person)
	ALL OWNED AUTOS						BODILY INJURY (Per accident)
	HIRED AUTOS	<input checked="" type="checkbox"/>					PROPERTY DAMAGE (Per accident)
A	UMBRELLA LIAB EXCESS LIAB	<input checked="" type="checkbox"/>	OCCUR CLAIMS-MADE	39 SBA AD1620	05/01/2024	05/01/2025	EACH OCCURRENCE \$1,000,000
							AGGREGATE \$1,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			39 WEC AD2B07	05/01/2024	05/01/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	N/A				E.L. EACH ACCIDENT \$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE -EA EMPLOYEE \$1,000,000
							E.L. DISEASE - POLICY LIMIT \$1,000,000
A	EMPLOYMENT PRACTICES LIABILITY			39 SBA AD1620	05/01/2024	05/01/2025	Each Claim Limit \$100,000 Aggregate Limit \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

New Mexico Mortgage Finance Authority
344 4TH ST SW
ALBUQUERQUE NM 87102

CANCELLATION

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

Susan L. Castaneda

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GARDUNO, JAMES D.

From: DUTTON-LEYDA, TRAVIS K.
Sent: Monday, February 19, 2024 4:26 PM
To: GARDUNO, JAMES D.
Cc: Purchasing DET
Subject: RE: Determination request SWPA (STATEWIDE PRICE AGREEMENT NO. 90-00000-19-00065CP)

James,

That is great news! You can move forward without my determination and the Horizons' declination.

Thank you.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

<https://santafenm.gov/finance-2/purchasing-1>



Vision without action is merely a dream.
Action without vision passes the time.
Vision with action can change the world. ~ Joel A. Barker

From: GARDUNO, JAMES D. <jdgarduno@santafenm.gov>
Sent: Monday, February 19, 2024 3:03 PM
To: DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Cc: Purchasing DET <purchasing_det@santafenm.gov>
Subject: RE: Determination request SWPA (STATEWIDE PRICE AGREEMENT NO. 90-00000-19-00065CP)

Travis

They just told me this is the new STATEWIDE PRICE AGREEMENT NO. 30-00000-23-00080DW.

Thank you,

*James Garduno
Project Administrator
Santa Fe Regional Airport
jdgarduno@santafenm.gov
Cell 505-670-3232
Office 505-955-2906*



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From: DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>
Sent: Monday, February 19, 2024 12:32 PM
To: GARDUNO, JAMES D. <jdgarduno@santafenm.gov>
Cc: Purchasing DET <purchasing_det@santafenm.gov>
Subject: RE: Determination request SWPA (STATEWIDE PRICE AGREEMENT NO. 90-00000-19-00065CP)

Hi James,

It doesn't look like the referenced Statewide is still active.

Thank you.

Regards,

Travis Dutton-Leyda
Chief Procurement Officer
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

<https://santafenm.gov/finance-2/purchasing-1>



Vision without action is merely a dream.
Action without vision passes the time.
Vision with action can change the world. ~ Joel A. Barker

From: GARDUNO, JAMES D. <jdgarduno@santafenm.gov>
Sent: Monday, February 19, 2024 12:24 PM
To: Purchasing DET <purchasing_det@santafenm.gov>
Subject: Determination request SWPA (STATEWIDE PRICE AGREEMENT NO. 90-00000-19-00065CP)

Good afternoon,

I am submitting the following scope of work, as well as proposal, the procurement method will be SWPA.

STATEWIDE PRICE AGREEMENT NO. 90-00000-19-00065CP

Forecasting budget funds will be operations. No necessary federal language needed.

Please let me know if you have any questions.

Scope of Work

DESIGN

Mobile friendly modern UX and design. This starts with understanding the users journey and pairing that with the optimal feel and layout of the site for their ease of use and desired conversion. Built from clearly defined target personas and user journey.

Primary pages will include the "home page" and "inner pages" to establish a design and direction - and will then be used as templated to build out to rest of the site to ensure a cohesive experience.

- Page list of the website is outlined in the document linked here: [\[Website Page List\]](#)

Content will be gathered by client. Agency will optimize gathered content and create needed content to fill gaps.

The design phase of this process will include 2 revision cycles. Once designs are approved the project will move into development. Any design changes in the development phase will require an additional scope of work agreement.

DEVELOPMENT

The development of the website will be based exclusively on the approved site map and designs from the DESIGN phase of the project. The following scope of work will be built on the Expression Engine platform

The process is as follows:

- Structuring the site's content model to make adding/editing content easier, more logical and more flexible with the features and functionality of the chosen CMS.
- Add content to the new website - checking formatting and naming conventions.
- Structuring the site's navigation / menus to improve usability.
- Building the front-end markup using modern techniques, focusing on modular/reusable elements and **mobile-first responsive** formatting.
- Structuring asset directories and implementing responsive images and static caching for best possible performance with long-distance requests.
- Build Modular pages that focus on conversion, discover operational info, filling out a form, joining a newsletter or reading an article.
- Create calls to action throughout the site so that visitors are compelled to make it to the next level of their user experience
- An **ADA Compliance** plugin will be installed and configured so that the site is compliant with A and AA accessibility standards. (Highly recommended for all public facing sites to allow for optimal accessibility and to safeguard against discrimination lawsuits)
- Digital Marketing Initialization will ensure the site maintains all of the traction it currently has and is setup for a successful launch. Title tags, meta descriptions, redirects and keyword research are included in this phase.
- Full QA of site prior to go-live.
- Client review and testing of final site
- After approval site will be scheduled for "Go-Live"
- Go-live process that includes setting and organizing correct DNS records and domain names

Grand Total Including NMGRT: \$59,276.20



State of New Mexico General Services Department

Statewide Contract Cover Page

Awarded Vendor:
0000055016
Xynergy Inc
315 Alameda Blvd
Albuquerque, NM 87113
Contact: Arijit Banerjee, Ethan Graham
Email: arijit@consumer51.com ethan@xynergy.com
Telephone No.: (618) 303-4709, (505) 274-8157
Contract Number: 30-00000-23-00080DW
Payment Terms: Net 30
F.O.B.: Destination
Delivery: As Requested
Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.
Procurement Specialist: Raelynn Lujan *RL*
Telephone No.: (505) 670-1561
Email: raelynn.lujan@gsd.nm.gov
Invoice:
As Requested at Time of Order
**For questions regarding this contract please contact:
Shawn Elkins- (505) 629-2297**
Title: Information Technology Professional Services
Term: February 9, 2024 thru February 8, 2028
Awarded Categories:
Xynergy Inc.

- 1 Application Support and Development Services**
- 2 IT Project Management, Planning, & Analysis Services**
- 3 Database Management Services and Business Intelligence**
- 11 IT Research and Advisory Services**
- 11 IT Research and Advisory Services as a Subscription Service**
- 12 IT Training Services**
- 13 IT Business and Process Consulting Services**
- 14 Marketing Services**
- 17 Electronic Content Management (ECM) Services**

This attached Contract is made subject to the “terms and conditions” as indicated.

Statewide Price Agreement

STATE OF NEW MEXICO

General Services Department, State Purchasing Division Information Technology Agreement

STATEWIDE PRICE AGREEMENT NO. 30-00000-23-00080DW

This Information Technology Professional Services Statewide Price Agreement (“SWPA”) is made by and between the State of New Mexico, **General Services Department, State Purchasing Division**, and **Xynergy, Inc**, hereinafter referred to as the “Contractor”, who are collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq*; and Procurement Code Regulations, NMAC 1.4.1 *et.seq*; Contractor has held itself out as expert in providing the Information Technology Professional Services (“ITPS”) identified in the Scope of Work contained herein, and the General Services Department has selected the Contractor as an offeror advantageous to the State of New Mexico for providing such services; and

WHEREAS, all terms and conditions of the **30-00000-23-00080DW** IT Professional Services Request for Proposals and the Contractor’s response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A.** “Acceptance” or “Accepted” mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Entity.
- B.** “Application Deployment Package” means the centralized delivery of business-critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C.** “Business Days” means Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D.** “Change Request” means a request to modify an express provision of a Professional Services Agreement entered pursuant to this SWPA, including a request to amend any such Agreement.
- E.** “Chief Information Officer (CIO)” means the Cabinet Secretary/CIO of the Department of

Information Technology for the State of New Mexico, or the CIO of a Procuring Entity, or the Designated Representative of a CIO.

F. “Confidential Information” means any information that is not subject to inspection under the Inspection of Public Records Act.

G. “Contract” means any agreement for the procurement of items of tangible personal property, services or construction.

H. “Contractor” means any entity that has a contract with a Procuring Entity.

I. “Contractor Intellectual Property” means any and all proprietary information owned by, licensed to or created by a Contractor, other than Procuring Entity Intellectual Property.

J. “Contract Manager” means a Qualified person from the Procuring Entity responsible for all aspects of the financial administration of a Professional Services Agreement. The same person may serve as the Contract Manager and the Executive Level Representative.

K. “Default” or “Breach” means a failure to perform an obligation owed under this SWPA, or under a Professional Services Agreement entered pursuant to this SWPA, or preventing another Party’s performance of its obligations under either agreement.

L. “Deliverable” means any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work in a Professional Services Agreement.

M. “Designated Representative” means a substitute(s) for a title or role, when the primary is not available.

N. “Desirable” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.

O. “Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

P. “DoIT” means the Department of Information Technology.

Q. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when made or added to a device, code, software, application or program, materially changes its utility, efficiency, functional capability, or application, but does not constitute solely an error correction.

R. “Escrow” means holding any property or instructions by a third-party agent, pursuant to the terms and conditions of an escrow agreement that specifies contingencies that trigger actions by the escrow agent.

S. “Executive Level Representative or ELR” means the individual empowered with the authority to represent and make decisions on behalf of the Procuring Entity’s executive or his/her Designated Representative. An ELR and a Contract Manager may be the same person.

T. “GRT” means New Mexico gross receipts tax.

U. “Hosting” means providing data storage, transfer and retrieval processes, and also includes all services relating to ongoing operation and maintenance of a data storage, transfer and retrieval system. Hosting also refers to Software as a Service (SaaS) and similar solutions. “Hosting” does not mean professional services relating to the design or implementation of a “Hosting” solution.

V. “Independent Verification and Validation (IV&V)” means the process of evaluating a Project and the Project’s product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements

established during the previous stage, both of which are performed by an entity independent of the Procuring Entity.

W. “IT” means Information Technology.

X. “Know How” means all tangible and intangible property or information including, but not limited to, all equipment, devices, documents, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Procuring Entity Intellectual Property or Deliverable under a Professional Services Agreement.

Y. “Payment Invoice” means a Contractor’s request for payment of Services issued in compliance with Article 3 of this Agreement.

Z. “Price Agreement (SWPA)” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a Professional Services Agreement, if the ordered services are within the scope of work and quantity limitations of the Price Agreement.

AA. “Procuring Entity” means any eligible user who enters into a Professional Services Agreement to procure services offered under this SWPA.

BB. “Procuring Entity Intellectual Property” means any-and-all proprietary information, confidential information, or Know How owned by, licensed to, or created for a Procuring Entity.

CC. “Professional Services Agreement (PSA)” means contracts used to procure specific professional services or deliverables off of a SWPA, as provided in Article 2(B).

DD. “Project” means a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget.

EE. “Project Manager” means a Qualified person designated or accepted by the Procuring Entity to be responsible for overseeing and coordinating a Project from initiation to close.

FF. “Qualified” means demonstrated experience performing specified Professional Services.

GG. “Quality Assurance” means a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

HH. “Services” means the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.

II. “Staff Augmentation” or “Staff Aug” means the procurement of professional services that cannot be performed by Procuring Entity staff because of a staffing shortage resulting from employee leave, staff position vacancies or staffing budget limitations. These terms do not refer to the procurement of project specific ITPS.

JJ. “State Purchasing Agent (SPA)” means the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.

KK. “State Purchasing Division (SPD)” means the State Purchasing Division of the General Services Department for the State of New Mexico.

LL. “Software” means all operating system and application software used by the Contractor to provide the Services under this Agreement.

MM. “Operation and Maintenance” means the set of activities which ensure consistent implementation of the originally Accepted (baseline) product set, or that result in corrections, insertions, deletions, extensions, and Enhancements to the baseline system to ensure promised

functionality.

NN. “Source Code” means the human-readable programming instructions organized into sets of files which represent the business logic for an application.

OO. “Turnover Plan” means the written plan developed by the Contractor and approved by the Procuring entity in the event that the work described in this Agreement transfers to another vendor or the Procuring Entity.

PP. “Unit Rate” means a pricing mechanism linked to a period of time (e.g., hourly, daily, weekly), to a quantity (e.g., per item, per-person, per-device, per location), to an event (e.g., per-call, per-visit, per-scan) or to some combination of these.

Additional Definitions Specific to IT Professional Services:

1. “Experience Level” means the number of years of experience for the subject IT Professional Service Category, and includes the following levels:

- a. Junior level is (between) 1 - 4 years;
- b. Mid-level is (more than) 4 years and (less than) 7 years; or
- c. Senior level is (more than) 7 years.

2. “Funding Commitment Achieved” means the Federal E-Rate funding achieved for the customer.

3. “IT Professional Services (ITPS)” mean the IT Professional Service Categories defined in Article 26, excluding:

- a. Any form of tangible personal property,
- b. Equipment,
- c. Hardware,
- d. Software, Licensed software,
- e. Website software tools, hosting or internet access,
- f. Transport of voice or data communications outside the requirement of the service categories. For example, website application development and maintenance and support are included. However, Website software tools, hosting or Internet access are out of scope,
- g. Subscription services other than Information Technology Research and Advisory Services. Subscription services for all other Categories are excluded.

4. “IT Professional Services Categories” means IT Professional Services for which Contractor has been awarded a SWPA, and specifically identified in Exhibit A to this Agreement. The IT Professional Services defined for all categories are provided in Article 26 of this Agreement.

5. “Key Staff” means the Qualified Personnel proposed as the client engagement manager/key point of contact and proposed technical lead(s) for each IT Professional Service Category.

6. “Local Area Network (LAN)” means a high-speed communications system optimized for connecting information-processing equipment within a building or group of buildings.

7. “Maximum Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel and travel time, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel. This rate does not include state gross receipts tax or local taxes.

8. "Public School Capital Outlay Council (PSCOC)" means the body with responsibility to approve allocations for public school capital outlay assistance.
9. "Public School Facilities Authority (PSFA)" means the agency under the PSCOC charged with responsibility for overseeing projects and shall serve as the owner's representative for work performed under this RFP.
10. "Qualified Personnel" means employees or subcontractors employed by the Contractor who, by possession of a recognized degree, certificate, or professional standing, or by extensive knowledge, training and experience, has successfully demonstrated ability to identify and solve or resolve problems relating to the subject matter, the work, or the project and, when required, is properly licensed in accordance with federal, state, or local laws and regulations.
11. "Staff Augmentation" or "Staff Aug" means the procurement of professional services that cannot be performed by Procuring Entity staff because of a staffing shortage resulting from employee leave, staff position vacancies or staffing budget limitations. These terms do not refer to the procurement of project specific IT professional services.
12. "Subscription Services" means a business model that a customer pays a recurring price to use or access and shall apply only to IT Professional Service Category 11, "Information Technology Research and Advisory Services and as defined in IT Professional Services in item (3.g) above." Subscription services for all other service categories are excluded.

ARTICLE 2 – SCOPE OF WORK

A. SWPA Scope of Work. The scope of work is to establish multiple statewide price agreements of qualified vendors based on standards across all IT Professional Services, from which state agencies and other eligible purchasers can select from various qualified IT Professional Services Contractors. The various IT Professional Services are limited to those defined in Article 26 of this Agreement. Contractors are to assume that all on-site work will be performed at a Procuring Entity office in New Mexico unless otherwise approved by the Procuring Entity contracting for services. The items NOT included in the scope of this Agreement are defined in Article 1(3).

B. PSA Scope of Work. Contractor shall provide those Professional Services that are required to accomplish the Scope of Work established in Exhibit 1 to a PSA. Links to the PSA are provided below:

1. [Professional Services Agreement \(PSA\) for Non-Staff Augmentation](#)
2. [Professional Services Agreement \(PSA\) for Staff Augmentation](#)

C. Performance Measures. The Contractor shall substantially perform to the satisfaction of the Procuring Entity the Performance Measures set forth in this SWPA and in a PSA.

D. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit 1 to a PSA.

E. Subscription Service. If a PSA procures a subscription service, Contractor hereby grants

Procuring Entity a non-exclusive, irrevocable license to use, the service, and any and all updates, corrections, and revisions to the service, for the term specified in the PSA.

F. Procuring Entity IP Rights.

1. Rights to Software. The Procuring Entity will own all rights, title, and interest in and to the Procuring Entity's Intellectual Property, Know-How, and the Deliverables, provided by the Contractor. The Contractor will take all actions necessary and transfer ownership of the Deliverables, Procuring Entity Intellectual Property and Know How to the Procuring Entity, without limitation, on Final Acceptance or as otherwise provided in a PSA.

2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of Procuring Entity Intellectual Property.

3. Rights to Data. Any and all Procuring Entity data stored on the Contractor's servers or within the Contractor's custody is the sole property of the Procuring Entity. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Entity's data in any manner, or provide it to any entity or person outside of the Procuring Entity without the express written authorization of the Procuring Entity. Contractor shall protect Procuring Entity data as required by law or a PSA, and in no case with less rigor than Contractor uses to protect its own confidential data.

ARTICLE 3 – COMPENSATION

A. Basis of Compensation. Procuring Entity will pay Contractor pursuant to Paragraph B of this section, subject to the maximum price set for each Deliverable stated in the PSA, less retainage, if any, identified in that agreement.

The applicable unit prices for professional services by category are set forth in Exhibit A to this SWPA.

Upon request of the Procuring Entity, Contractor shall provide satisfactory evidence of applicable unit pricing.

B. Maximum Compensation. Total maximum compensation for a procurement off of this SWPA shall be specified in the PSA, and shall be inclusive of estimated GRT, as applicable. This amount is the maximum total amount; it is not a guarantee that the work to be performed by Contractor, and the total of the corresponding payments that Procuring Entity pays to Contractor, will equal the maximum total amount. In no event will Procuring Entity pay Contractor for any amount that exceeds the maximum total amount without the PSA being amended in writing.

C. Invoicing. Procuring Entity shall pay Contractor upon Procuring Entity's Acceptance of Contractor's detailed and certified Payment Invoice(s). Each Payment Invoice shall identify the Deliverable and, as applicable, unit pricing. Unit pricing shall specify the unit price category, associated price, the number of units delivered per price category, the total invoiced amount for the number of units delivered per price category, the tax locations where services were performed and received, the applicable GRT rate and the GRT amount. Unless otherwise specified in a PSA, Contractor shall submit invoices monthly, and upon the acceptance of each Deliverable. Contractor shall create and maintain contemporaneous time and expenditure records that indicate the date, time, nature, personnel and unit rate of services rendered pursuant to a PSA, and provide those records to the Procuring Entity upon request.

The invoiced amount for a deliverable shall be the lesser of the itemized billings for the actual units delivered based on the unit rate pricing specified in a PSA, or the maximum total amount specified for a deliverable, less any retainage. Procuring Entity will not pay more than the maximum total amount if billed units exceed the maximum total amount.

D. Taxes. Contractor and its subcontractors, if any, will pay all Federal, State and local income and other taxes and government fees applicable to its operation(s) as well as the taxes and fees associated with Contractor's employment of its Employees. Contractor will require its subcontractors, if any, to hold Procuring Entity harmless from any responsibility for taxes, damages, fees and interest, if applicable, as well as any and all contributions required under Federal and/or state and local laws and regulations, including any other costs, transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation. Contractor must report its GRT, income tax and other tax obligations under Contractor's Federal and State tax identification number(s).

E. Retainage. A PSA may include a Retainage provision that authorizes the Procuring Entity to retain a percentage of the amount due under each Contractor invoice pending interim or final acceptance of a Deliverables or Deliverables. A Procuring Entity shall release all retained amounts to Contractor as specified in a PSA.

F. Rate Changes.

1. Maximum Unit Rates shall not increase for the four-year term of this Agreement. Contractor may request annual rate increases, that shall not exceed the increase in the Consumer Price Index since the last rate setting. At any time during the term of this Agreement, Maximum Unit Rate reductions are encouraged and shall be submitted to DoIT and SPD for review and approval resulting in a written amendment to the SWPA. Authorized price increases under this Agreement shall only be applied prospectively, and shall not apply to an existing PSA.

2. A Procuring Entity is encouraged to negotiate pricing, not to exceed the maximum price for services awarded, with any Contractor on a SWPA.

3. This Agreement may not be extended if the Contractor does not adhere to all terms and conditions of this Agreement, including administrative reporting and fee submission.

4. The Contractor, its employee(s) and subcontractor(s), if any, shall be independent contractors and not employees of the State of New Mexico.

5. Contracts issued under this Agreement, shall be performed under the direction of a

Procuring Entity and services will be performed only as specified in an executed PSA.

ARTICLE 4 – ACCEPTANCE

A. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No final payment or release of retainage shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit 1 to the PSA.
2. Complies with the terms and conditions of the SWPA and PSA.
3. Meets the performance measures for the Deliverable(s) specified in the PSA and this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the deliverable(s); and
5. Complies with all the requirements of this SWPA and the PSA.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within twenty (20) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

B. Rejection. Unless the Executive Level Representative gives notice of rejection within the twenty (20) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, twenty (20) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have twenty (20) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach

of this Agreement.

The Procuring Entity may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Entity may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE STATE PURCHASING AGENT.

The initial term of the Agreement shall be for four (4) years, effective upon signature of the last of all required signatories. The contract term, including extensions and renewals, shall not exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

A. Grounds. A Procuring Entity may terminate a PSA for convenience or cause. The Contractor may only terminate a PSA based upon an uncured, material breach of the PSA by the Procuring Entity.

B. Appropriations. A Procuring Entity may terminate a PSA, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of a PSA. The Procuring Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Entity terminates this Agreement pursuant to this subsection, the Procuring Entity shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. Entity Opportunity to Cure.

1. Except as otherwise provided in Paragraph (3), the Procuring Entity shall give Contractor written notice of termination of a PSA at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Entity written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall identify:

(i) all the Procuring Entity's material breaches of this SWPA or the PSA upon which the termination is based; and

(ii) state what the Procuring Entity must do to cure such material breaches. Contractor's notice of termination shall only be effective:

a. if the Procuring Entity does not cure all material breaches within the thirty (30) day notice period; or

b. in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Entity 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, a Procuring Entity may immediately terminate a PSA upon written notice to the Contractor if:

- (i) the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Entity;
- (ii) during the term of the PSA, the Contractor is suspended or debarred by the State Purchasing Agent; or
- (iii) the PSA is terminated pursuant to Paragraph B of this Article.

D. Liability. Except as otherwise expressly allowed or provided under this SWPA or the PSA, the Procuring Entity's sole liability upon termination shall be to pay for acceptable work performed prior to the termination date; provided, however, that a termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this SWPA or PSA. The Contractor shall submit an invoice for such work within thirty (30) days of the termination date of a PSA. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING ENTITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT OR A PSA.**

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event a PSA is terminated for any reason, or upon expiration of the PSA, and in addition to all other rights set forth in this Agreement and the PSA, the Contractor shall:

- 1. Transfer, deliver, and/or make readily available to the Procuring Entity property in which the Procuring Entity has a financial interest and any and all data, Know How, Intellectual Property, inventions, data or property of the Procuring Entity;
- 2. Incur no further financial obligations for materials, Services, or facilities under the PSA without prior written approval of the Procuring Entity;
- 3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Entity may direct, for orderly completion and transition;
- 4. Take such action as the Procuring Entity may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
- 5. Agree that the Procuring Entity is not liable for any costs arising out of termination and that the Procuring Entity is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
- 6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Entity's programs;
- 7. In the event that this Agreement or a PSA is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Entity's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Entity the full amount of the reduction;

8. Should this SWPA or a PSA terminate due to the Contractor's Default, the Contractor shall reimburse the Procuring Entity for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this SWPA or a PSA is terminated for any reason, or upon the expiration of either, the Contractor shall develop and submit to the Procuring Entity for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Entity and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Entity or created by the Contractor under this Agreement, to the Procuring Entity, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Entity, the Contractor shall provide to the Procuring Entity a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Entity or created by the Contractor.

B. Procuring Entity. In the event this SWPA or a PSA is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this SWPA or a PSA, the Procuring Entity shall:

1. Retain ownership of all work products and documentation created by Contractor pursuant to a PSA; and
2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Entity, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source that arises out of Contractor's performance of, or failure to perform, this Agreement or a PSA. 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) Business Days after it receives notice thereof, notify, by electronic mail, with a receipt confirmation, the legal counsel of the Procuring Entity, the Risk Management Division of the New Mexico General Services Department, and DoIT.

B. The indemnification obligation under this Agreement or a PSA shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits asserted against or payable by an indemnified party. Money due or to become due to the Contractor under this Agreement or a PSA may be retained by the Procuring

Entity, as necessary, to satisfy any indemnity obligation owed by Contractor pursuant to this Agreement.

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership. Unless otherwise specified in a PSA, Procuring Entity shall be considered the creator and owner of all Procuring Entity Intellectual Property arising from the performance of a PSA by Contractor. Procuring Entity shall own the entire right, title and interest to all such Intellectual Property worldwide, and, other than in the performance of this Agreement or a PSA, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Procuring Entity Intellectual Property to any entity or person outside of the Procuring Entity without the express written authorization of the Procuring Entity. Contractor shall notify the Procuring Entity, within fifteen (15) Business Days, of the creation of any Procuring Entity Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Procuring Entity Intellectual Property vests in the Procuring Entity and shall take no affirmative actions that might have the effect of vesting all or part of the Procuring Entity Intellectual Property in any entity other than the Procuring Entity. If, by judgment of a court of competent jurisdiction, Intellectual Property or Know How are not deemed to be created or owned by the Procuring Entity, Contractor hereby acknowledges and agrees to grant to the Procuring Entity and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless Procuring Entity, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under a PSA infringes any Intellectual Property right of a third party, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Entity based upon Contractor's Intellectual Property infringement relating to any product or Services provided under a PSA, the Contractor agrees to reimburse the Procuring Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Entity shall:

1. Give the Contractor written notice of any infringement claim as soon as practicable;
2. Work with the Contractor to control the defense and settlement of the claim; and
3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Entity Rights. 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 sole expense:

1. Provide the Procuring Entity the right to continue using the product or service and fully indemnify the Procuring Entity against all claims that may arise out of the Procuring Entity'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 Procuring Entity to the extent such modification is the cause of the claim.

ARTICLE 11 – WARRANTIES

The Contractor expressly warrants that the Deliverable(s) specified in a PSA will comply with the terms of the PSA, with Contractor's official published specifications for the Deliverables and with all generally accepted industry standards applicable to the Deliverables. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases. This warranty extends two (2) years after final acceptance, unless a different (longer/shorter) duration is specified in a PSA.

ARTICLE 12 – CONTRACTOR PERSONNEL: (Key Staff and Qualified Personnel)

A. Contractor Personnel. Contractor's Qualified Personnel are listed by level of experience on **Exhibit A**, attached hereto. Contractor's Key Staff are those individuals considered by the Procuring Entity to be mandatory to the work to be performed under a PSA and identified in such. Contractor's Qualified Personnel and Key Staff identified in a PSA shall not be diverted from performing services under that agreement without the prior written approval of the Procuring Entity.

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Entity.

C. Qualifications. For all personnel, the Procuring Entity reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Entity approval. The Procuring Entity, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Entity reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Entity, meeting the Procuring Entity's expectations.

D. Non-Competition. Unless otherwise specified in a PSA, Contractor's employment agreement or contract with a person or subcontractor who performs services for a Procuring Entity under a PSA may not include a covenant not to compete or other term that would prevent, penalize or impede such person from pursuing or obtaining employment with, or directly contracting to provide services for, Procuring Entity, any other New Mexico public employer, or any other contractor of Procuring Entity. Contractor shall not enforce any such provision of a pre-existing employment agreement or contract. Procuring Entity shall not offer to directly employ any Personnel who have been identified in a PSA in effect fewer than six (6) months.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents are independent contractors performing professional Services for the Procuring Entity and are not employees of the State of New Mexico. The Contractor and its agents shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement or a PSA. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement or a PSA; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement or a PSA, the Contractor shall immediately disclose such fact to the Procuring Entity.

ARTICLE 14 – CHANGE MANAGEMENT

A. Changes. No provision of a PSA, including the Scope of Work, shall be changed without written approval of the Executive Level Representative. A change that affects any of the following shall only be made through an Amendment:

1. Deliverable requirements;
2. Any Deliverable that extends the termination date specified in a PSA;
3. Compensation of any Deliverable that exceeds the maximum amount specified for that Deliverable;
4. Maximum compensation;
5. Mutually agreed termination; or
6. Addition or deletion of Professional Service categories or levels.

Any other change may be made, at the discretion of the Executive Level Representative, through a written change order.

B. Change Request Process. In the event Contractor requests a change, 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 Executive Level Representative to include:
 - a. the name of the person requesting the change;
 - b. a summary of the requested change;
 - c. the start date for any change;
 - d. the reason and necessity for the change;
 - e. the elements to be altered; and
 - f. the impact of the change.
2. The Executive Level Representative 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. The Executive Level Representative shall prepare and process an amendment for any change subject to Paragraph A(1)-(6) of this Article. All decisions made by the Executive Level Representative are final. A change, or amendment, as applicable, becomes a part of the PSA and is binding.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

If IV&V Professional Services are used or required to be used for the Project associated with a PSA, the Contractor shall cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:

1. Providing the Project documentation;
2. Allowing the IV&V vendor to sit in on the Project meetings;
3. Supplying the IV&V vendor with any other material as directed by the Project Manager; and
4. Any other cooperation specified in a PSA or reasonably necessary to facilitate IV&V oversight objectives.

ARTICLE 16 – CONTRACT DEFAULT/BREACH/REMEDIES

In case of Default and/or Breach by the Contractor, the Procuring Entity and the State of New Mexico may procure Deliverables owed, but not provided, by Contractor from another source and hold the Contractor responsible for any resulting excess costs. Contractor shall also be liable for other direct damages.

Contractor shall not be liable for indirect, consequential or special damages resulting from a default or breach unless (1) the Procuring Entity's right to recover, and the nature of, any such damages

are expressly identified in a PSA, or (2) Contractor is entitled to be indemnified against a claim for any such damages under an insurance agreement.

ARTICLE 17 – INSURANCE REQUIREMENTS

A. Commercial Liability Insurance. Contractor and its subcontractors shall maintain occurrence-based general liability coverage with minimum limits of \$1 million per occurrence and \$2 million aggregate per year. If a PSA requires Contractor to deliver, deploy or design Intellectual Property, Contractor's general liability insurance shall include personal and advertising injury coverage applicable to the associated risks. Procuring Entity and the State of New Mexico shall be identified as additional named insureds under all coverage obtained to comply with this Paragraph 17(A).

B. Professional Liability Insurance. Contractor and its subcontractors shall maintain professional liability (errors & omissions) coverage applicable to the Professional Services provided under a PSA. This coverage shall have minimum limits of \$2,000,000 per claim/aggregate. If this insurance is written on a "claims made" basis, then the policy shall provide "tail coverage" for claims asserted within three (3) years after termination of the PSA.

C. General Insurance Requirements. Insurance coverages shall be provided by a company with an A.M. Best rating of A- or better. Certificates showing required coverages shall be delivered to the Procuring Entity prior to beginning any activity provided for under a PSA. All certificates of insurance shall require the insurer, its broker or agent to provide DoIT with thirty (30) days advance notice of any termination or non-renewal of coverage identified in a certificate. DoIT and the SPD may request complete copies of Contractor's insurance agreements, including endorsements, at any time.

ARTICLE 18 – EXTRA-CONTRACTUAL (TORT) LIABILITY

Contractor shall be liable for damages resulting from injury to persons and/or property if and to the extent the injury was caused by or due to the breach of any extra-contractual (tort) duty owed by Contractor or any of its agents, and relating in any way to a PSA, or to the Deliverables under any such agreement. Contractor's extra-contractual liability extends to Procuring Entity, third parties and/or employees of the Procuring Entity and to the State of New Mexico, and encompasses any remedy that may exist under law or equity.

ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or of a PSA, including a claim for money due or to become due, without the prior written approval of this approval authorities for the relevant agreement.

ARTICLE 20 – SUBCONTRACTING

A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of this Agreement's approval authorities, and shall not subcontract any portion of a PSA without the written approval of the Procuring Entity.

Subcontracting shall not relieve the Contractor from any of its obligations and liabilities under this Agreement, or under any PSA. Nor shall any subcontracting obligate Procuring Entity to make any payment to a subcontractor.

B. Responsibility for Confidentiality. The Contractor must not disclose Confidential Information to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement or a PSA.

C. Documentation. Upon the request of a Procuring Entity, Contractor shall provide copies of all approved subcontracts. Contractor shall also provide Procuring Entity with any document or information requested to evaluate a proposed subcontract or the performance of any subcontractor.

D. Performance. This Agreement may be terminated at the discretion of DoIT or SPD if Contractor engages in excessive subcontracting, experiences defaults relating to subcontracted work, or engages in other abusive subcontracting practices under a PSA.

ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement or a PSA releases the Procuring Entity, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under a PSA.

ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the Procuring Entity or, developed by the Contractor based on information provided by the Procuring Entity in the performance of a PSA shall be kept confidential and shall not be made available to any individual or organization outside the Contractor by the Contractor without the prior written approval of the Procuring Entity. Contractor shall protect Confidential Information as required by law or as specified in a PSA. In no event shall a Contractor protect Procuring Entity Confidential Information with less rigor than Contractor protects its own confidential data. Contractor shall not make available or provide Confidential Information to any third party absent Procuring Entity's prior written approval.

Upon termination of a PSA, Contractor will deliver all Confidential Information in its possession to Procuring Entity within thirty (30) Business Days of the termination, Contractor acknowledges that Contractor's failure: (a) to deliver such Confidential Information to Procuring Entity, or (b) to protect and keep Confidential Information secret may result in Procuring Entity's seeking to obtain direct, special and/or incidental damages from Contractor.

ARTICLE 23 – CONFLICT OF INTEREST

The Contractor warrants that it 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 or under a PSA. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 – CLOSEOUT, RECORDS AND AUDIT

A. All records and activities of Contractor shall be subject to financial and performance audits in the discretion of SPD, DoIT, the Procuring Entity, the Department of Finance and Administration (DFA) and the State Auditor's Office as required by applicable oversight rules, authorities or a PSA. Contractor shall fully cooperate with all lawful audit requests and processes, and shall produce any records, including Contractor's internal records, as required to facilitate auditing. Confidentiality shall not be a basis for withholding any record, but Contractor may request confidential treatment of its internal records as authorized by law.

B. Contractor shall maintain its internal records relating to this Agreement, or to a PSA, for three years after the relevant agreement terminates.

C. Contractor shall cooperate with the Procuring Entity in providing public records held by Contractor that are responsive to a lawful public records request.

D. Within ninety (90) days of termination of this Agreement, or a PSA, as applicable, Contractor shall transfer to the State contracting party, all data and records received from or created for that party by Contractor, and shall confirm that Contractor has destroyed, pursuant to mutually agreed criteria specified in a PSA or applicable law, any duplicate copies of all such data and records under Contractor's control. These requirements do not supersede any more specific requirements established by law, this Agreement or of a PSA.

E. Contractor shall comply with any additional project closeout requirements specified by DoIT or a Procuring Entity and incorporated into a PSA.

ARTICLE 25 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A.** If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement or any PSA, Contractor agrees to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B.** Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C.** Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
- D.** For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

ARTICLE 26 – IT PROFESSIONAL SERVICES CATEGORIES

1. Application Development Services

The purpose of this category is to provide complete development and support of the varied and numerous applications that are created, maintained, and owned by the State.

Brief Description of Services: Services may include computer programming, on premise; documenting; testing; writing and maintaining the source code, regardless of infrastructure; all processes between the conception and final manifestation of the software in a planned and structured manner; and/or bug fixing involved in creating and maintaining applications and frameworks using a standard software development life cycle. Development may include research, new development, prototyping, modification, re-use, re-engineering, maintenance, or any other activities that result in software products. Services may include the necessary knowledge of commercial off-the shelf software (COTS) platforms, web/mobile application design, content development, client-side/server-side scripting, or web server, development. Design, develop, and implement information systems that include designing or building a customized architecture and/or application, integrating it with new or existing hardware, custom software, and/or communications infrastructure.

Expected typical skills in, knowledge about, and experience with may include:

- 1) A mainframe environment - COBOL, PL/I, JCL, CICS, DB2, C/C++, IBM OS 390, and IBM AS400;
- 2) N-tier platform programming services - .NET, C# or Java and related technologies including VB.NET, XML, VBScript, JavaScript, HTML, Eclipse, ASP, .NET framework, web services/WCF, and mobile application development;
- 3) Client/Server (including three tiered architectural environments). – Java, J2EE C/C++, Cold Fusion/Adobe Suite of products, PowerBuilder, Micro Focus Cobol, Visual Basic, Perl, C# and .NET, CSS, and Oracle DBMS;
- 4) Structured Query Languages/Stored Procedures, indexes, triggers, and functions
- 5) The various stages of SDLC such as design, development testing, and deployment of applications;
- 6) Software testing to include planning, constructing, and executing automated tests, product tests, system tests, unit tests, load tests, volume tests, network tests as well as integration with release control process;
- 7) COTS implementations;
- 8) Design and creation of web and mobile applications, including user experience improvements;
- 9) System domains, object/data models, wire frames, prototypes, flowcharts and use cases;
- 10) Experience with common environments and frameworks such as (but not limited to): ASP.NET and ASP.NET MVC Frameworks, ColdFusion, CGI Java, PHP, Apache, FileMaker, IBM DB2, Microsoft SQL Server, MySQL, Oracle, PostgreSQL, or Sybase, Web2.0, WebSphere, Java / J2EE/JEE, PERL / CGI, PHP, XML / HTML / DHTML, SOAP, Jasper, content management systems;
- 11) Enterprise application systems integration and implementation including both COTS and custom applications;
- 12) Designing, programming, converting, installing, system training, managing and maintaining applications and application interfaces/systems, testing (all levels), implementation and cutover planning, and data conversion/migration for the implementation of the systems;
- 13) Implementation of infrastructure solutions capable of cost-effectively supporting business goals; or
- 14) Designing and building enterprise-level data integration and data transformations solutions.
- 15) Any cloud technologies that are specific to a cloud vendor or any technologies that are listed above that can be leveraged in the cloud platform.
- 16) Any rapid application development tools.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Mandatory Qualifications	
Degree Level	Not Applicable.
Relevant Experience	(Between) 1 – 4 years of experience as described above; or
Mid-Level Mandatory Qualifications	

Degree Level	College Degree is preferred or can be substituted with equivalent years of related experience.
Relevant Experience	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Mandatory Qualifications	
Degree Level	College Degree is preferred or can be substituted with equivalent years of experience.
Senior-level	(More than) 7 years of experience as described above.
Optional/Desirable Requirements: Does NOT replace the Mandatory Qualifications above	
Degree Level	Bachelor's or other Degree in Computer Science or a related field such as Management Information Systems, Software Engineering, Software Development; or
Professional Certifications	Any relevant certification that applies to the above listed expected skillset.

2. IT Project Management, Planning, and Analysis Services

The purpose of this service is to provide the support and management professional services needed to execute, using best practices, IT projects from inception to closeout.

Brief Description of Services: Project management services should be provided in accordance with IT industry best practices such as described in the Project Management Institute's *A Guide to the Project Management Body of Knowledge (PMBOK Guide)*, and in standards and requirements as provided by the State of New Mexico's Chief Information Officer (CIO).

Project management, planning and analysis includes developing and maintaining project charters, project plans, schedules, risk and issue logs, mitigation strategies, communication plans, resource/capability plan, and executive briefings, evaluation and design, planning for or directing large-scale integration efforts, and implementing IT standards and guidelines, managing scope, requirements, schedule and budget, training plans, and transition to operations.

It is desired that personnel hired as project managers have Project Management Professional (PMP) certification.

Expected typical skills in, knowledge about, and experience with may include:

- 1) Assisting with management and planning of IT initiatives in areas such as: cost benefit analysis, return on investment (ROI), gap analysis, requirements definition, systems analysis, contingency/mitigation/risk planning, disaster recovery/business continuity planning; business process analysis, documentation and process improvements;
- 2) Analyzing data to determine/recommend solution, such as installation of alternate methods and procedures, changes in processing methods and practices, modification of machines or equipment, or redesign of products or services;
- 3) Conducting research and industry surveys, and performing studies and surveys to obtain data, and analyze problems to advise and make recommendations on business and technical solutions based on hands-on experience solving similar business problems, including emerging technologies and trends, standards, and products as required;

- 4) Designing / development of IT specifications, models, architecture and guidelines;
- 5) Full system development life cycle and various industry software project management approaches;
- 6) Development and management of standard project artifacts such as project charter, project plan, scope, objectives, schedules, process maps, data flow diagrams, architectural diagrams, implementation strategies, and project management plans;
- 7) Interfacing directly with varied stakeholders: executive steering committees, project teams, contract teams, technical, business, and management teams;
- 8) Follow all specifications and guidelines including, but not limited to, Project Certification Committee (PCC), Technical Architectural Review (TARC) processes and documentation where applicable;
- 9) Business process analysis/modeling and organizational change management as applicable to project planning;
- 10) Developing, enhancing, and maintaining user documentation for multiple applications including documentation required for the operations provider; or
- 11) Composition of use case and scenario designs.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Minimum Mandatory Qualifications	
Degree Level	Associate Degree in Computer Science or a related field such as Information Technology, Management Information Systems, or Project Management; and
Relevant Experience	(Between) 1 – 4 years of experience as described above; or
Mid-Level Minimum Mandatory Qualifications	
Degree Level	Associates Degree in Computer Science or a related field such as Information Technology, Management Information Systems, or Project Management; and
Relevant Experience	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Minimum Mandatory Qualifications	
Degree Level	Associates Degree in Computer Science or a related field such as Information Technology or Project Management; and
Relevant Experience	(More than) 7 years of experience as described above.
Optional/Desirable Requirements: Does NOT replace the Mandatory Qualifications above	
Degree Level	Bachelor's or other Degree in Computer Science or a related field such as Information Technology, Management Information Systems, or Project Management.
Professional Certifications, any one	Project Management Professional (PMP) certification, Project Management Institute Agile Certified Professional (PMI-ACP), or Certified Scaled Agile Framework® (SAFe) enterprise.

3. Database Management and Business Intelligence Services

Brief Description of Services: Services may include for on-premise or cloud platform: creating logical and physical data models, planning, designing, programming, converting, installing, training, implementing security, and maintaining database systems in stand-alone, integrated, or networked configurations, database administration, modification and upgrade including system performance analysis, database upgrading and performance tuning, data extract/transform/load (ETL), stored procedure development, query optimization and data migration, managing and monitoring production databases in an N-

tier environment, automated routine backups and refreshes, and data recovery. Provide ongoing database support to help ensure operations of day-to-day functionality. Develop design documentation, test plans, user manuals, and operations plans and instructions. Developing and executing functional test plans for systems and applications, including developing test data sets and scenarios.

Business intelligence (BI) services include the transformation of raw data into meaningful and useful information for business analysis purposes. These services are capable of handling large amounts of unstructured data to help identify, develop, and otherwise create and allow for the easy interpretation of these large volumes of data including dashboards. Identifying new opportunities and implementing an effective strategy based on insights can assist the State of New Mexico with policy, planning, and informed decision making.

Expected typical skills in, knowledge about, and experience with may include:

- 1) Any RDBMS or cloud specific database engines including, but not limited to: MS SQL Server, Oracle DBMS including engineered solutions and appliances, MySQL, DB2 and/or IBM DB2; including data modeling, stored procedures, indexes, triggers, data processing flowcharting techniques;
- 2) Database structures, theories, principles, and practices;
- 3) Managing, monitoring, designing, building, installing, configuring, and supporting database infrastructure servers;
- 4) Database performance monitoring, management, tuning and troubleshooting;
- 5) Applicable data privacy practices and laws and appropriate data masking techniques;
- 6) Ability to conduct research into database issues, standards, and products as needed;
- 7) Data entry operations including the ability to accurately enter information into a computer, accessing information from a computer, and verifying information on a screen;
- 8) Data entry operations including duties utilizing automated equipment, including electronic keyboard, display screen, and sorted memory;
- 9) Data entry operations including ability to operate and understand basic scanning and imaging equipment, including pan, skew, and image correction techniques;
- 10) Supporting a wide range of business decisions ranging from operating to strategic business decisions. Strategic business decisions include priorities, goals, and directions at the broadest level;
- 11) Data derivation/Data import from external data and from internal sources;
- 12) Transforming raw data into meaningful and useful information, and developing and documenting algorithms. May include establishing a methodology and including any assumptions.
- 13) Business Intelligence: Multidimensional aggregation and allocation; de-normalization, tagging and standardization;
- 14) Business Intelligence: Establishment and design of object level design tools;
- 15) Business Intelligence: Real-time reporting with analytical alert; interface with unstructured data source; group consolidation, budgeting and rolling forecast;
- 16) Business Intelligence: Statistical inference and probabilistic simulation;

- 17) Business Intelligence: Key performance indicators optimization; version control and process management; open item management;
- 18) Business Intelligence: Providing historical, current, and predictive views of business operations; or
- 19) Business Intelligence: Reporting, online analytical processing, analytics, data mining, process mining, complex event processing, business performance management, benchmarking, text mining, machine learning/predictive analytics, and prescriptive analytics.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Mandatory Qualifications	
Degree Level	Not Applicable.
Relevant Experience	(Between) 1 – 4 years of experience as described above; or
Mid-Level Mandatory Qualifications	
Degree Level	College Degree is preferred or can be substituted with equivalent years of related experience.
Relevant Experience	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Mandatory Qualifications	
Degree Level	College Degree is preferred or can be substituted with equivalent years of experience.
Senior-level	(More than) 7 years of experience as described above.
Optional/Desirable Requirements: Does NOT replace the Mandatory Qualifications above	
Degree Level	Bachelor's or other Degree in Computer Science or a related computer field
Professional Certifications, any one	Any relevant certification that applies to the above listed expected skillset.

11. Information Technology Research and Advisory Services

Brief Description of Services: Information technology research and advisory services to provide technology related insight. Research should be targeted at CIOs and senior IT leadership. The services typically consist of research, executive programs, consulting, and events. Services include analytical independence, accuracy, and integrity of information provided.

Expected typical skills in, knowledge about, or experience with, and available resources may include:

- 1) Research, analysis, identification and comparison of industry best practices and leading trends, and ability to succinctly and accurately present results and recommendations to IT decision maker;
- 2) IT metrics data including detailed spending and staffing metrics and insight into the performance of IT functions;
- 3) Contract review and complete, independent and objective assessment of buyer-seller situations;

- 4) Peer networking including access to shared knowledge and experiences of IT professionals around the world;
- 5) Access to teleconferences, newsletters and forums, community information and best practices; or
- 6) Providing fact-driven reports and personal consultation on a wide range of IT areas such as: market share, spend, and size of current vendors; emerging technologies for e-government, cloud computing, “big data” analytics, and government use of social networking platforms; best practices for technology procurements, contract reviews and contract negotiations.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Minimum Mandatory Qualifications	
Degree Level	Master’s Degree in any field with a concentration in computer technology; and
Junior-level	(Between) 1 – 4 years of experience as described above; or
Mid-Level Minimum Mandatory Qualifications	
Degree Level	Master’s Degree in any field with a concentration in computer technology; and
Mid-level	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Minimum Mandatory Qualifications	
Degree Level	Master’s Degree in any field with a concentration in computer technology; and
Senior-level	(More than) 7 years of experience as described above.
Optional/Desirable Requirements (Does NOT replace the Mandatory Qualifications above)	
Degree Level	Bachelor’s or other in Computer Science or a related computer field.
Professional Certifications, any one	Any training and IT related certifications.

12. IT Training Services

Brief Description of Services: Services include training users to work with new computer hardware or software, including printers, office application software, database systems, and messaging systems. Group classes and individual coaching may be designed for novice or advanced users. Provide various IT industry certifications, training and testing.

Desirable training includes, but is not limited to:

- 1) Baseline Certification training for State personnel;
- 2) Continuous Education/Sustainment training to maintain certification status and further develop skills;
- 3) Certification training for specific operating system environments;
- 4) Microsoft Office
- 5) Microsoft Technical
- 6) Cisco;
- 7) Information Security;
- 8) VMware;

- 9) Cloud Technologies including but not limited to Cisco, CompTIA, Microsoft, and VMware Cloud Technologies;
- 10) Adobe Creative Suite;
- 11) Business Skills;
- 12) Citrix;
- 13) Crystal Reports;
- 14) IBM;
- 15) ITIL;
- 16) Linux;
- 17) Project Management;
- 18) QuickBooks; and
- 19) Six Sigma.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Minimum Mandatory Qualifications	
Degree Level	Associate Degree in Computer Science or a related field such as Information Systems; and
Relevant Experience	(Between) 1 – 4 years of experience as described above; or
Mid-Level Minimum Mandatory Qualifications	
Degree Level	Not Applicable
Relevant Experience	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Minimum Mandatory Qualifications	
Degree Level	Not Applicable
Relevant Experience	(More than) 7 years of experience as described above.
Optional/Desirable Requirements (Does NOT replace the Mandatory Qualifications above)	
Degree Level	Bachelor's or other Degree in Computer Science or a related computer field.
Professional Certifications, any one	Any training and IT related certifications.

13. IT Business and Process Consulting Services

Brief Description of Services: Services include providing business consulting in the areas of business development, business process management, change management, leadership, customer relationship, organizational design, development, and efficiency consulting for the public/government. Provision of these services may include a wide variety of specializations such as computer science, information systems/technology, and human resource business and process consulting.

Services may include helping state government improve performance, primarily through the thorough analysis of existing business problems and development of plans for improvement. Services may include management consultants to gain external, and more objective advice and recommendations, to gain access to the consultants' specialized expertise.

Consultancies may also provide organizational change management assistance, development of coaching skills, technology implementation, strategy development, or operational improvement services. Business consultants may propose for customer approval their own methodologies or frameworks to guide the identification of problems, and to serve as the basis for recommendations for more effective or efficient ways of performing business tasks.

Expected typical skills may include:

- 1) Excellent written and oral communication skills;
- 2) The ability to leverage knowledge of theory, principle, practices or technology in the relevant discipline(s) or field of specialization;
- 3) The ability to present ideas across multiple audiences and environments using business-friendly and user-friendly language;
- 4) Be highly self-motivated and directed, with keen attention to detail;
- 5) The ability to effectively prioritize and execute tasks in a high-pressure environment;
- 6) The ability to work well with teams and communicate with variety of stakeholders;
- 7) Exemplary ability to perform problem analysis, problem solving, and communicate potential solutions to customer's unique problems; and
- 8) Collaborate with the customer to keep them informed of progress and make relevant decisions.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Minimum Mandatory Qualifications	
Degree Level	Bachelor's Degree in Business or related field such as accounting, business, finance, marketing, management, information technology or a similar area; and
Junior-level	(Between) 1 – 4 years of experience as described above: or
Mid-Level Minimum Mandatory Qualifications	
Degree Level	Bachelor's Degree in Business or related field such as accounting, business, finance, marketing, management, information technology or a similar area; and
Mid-level	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Minimum Mandatory Qualifications	
Degree Level	Bachelor's Degree in Business or related field such as accounting, business, finance, marketing, management, information technology or a similar area; and
Senior-level	(More than) 7 years of experience as described above.
Optional/Desirable Requirements (Does NOT replace the Mandatory Qualifications above)	
Degree Level	Any other Degree in Business or related field such as accounting, business, finance, marketing, management, information technology or a similar area
Professional Certifications, any one	Six Sigma, Lean Six Sigma, or any related IT related certifications, if any.

14. Marketing Services

The purpose of this category is to provide comprehensive marketing services for the diverse set of State agencies.

Brief Description of Services: Services that support any IT related activities that may include marketing plan development and implementation; market research; marketing consulting; marketing strategy development; brand development and management; digital and tangible marketing solutions.

Expected typical skills may include:

- 1) Marketing plan development and execution;
- 2) Marketing campaign development and implementation;
- 3) Mobile- responsive website design and development; website user-experience improvement;
- 4) Website management services to update content including text, graphics, and other digital files;
- 5) Website design and development with content management system portal;
- 6) Branding development, rebranding strategies, brand awareness solutions;
- 7) Graphic design for website and collateral materials;
- 8) Accessibility design and development in support of Web Content Accessibility Guidelines 2.1AA (WCAG 2.1AA; or
- 9) Social media strategy development and implementation.

Table 1:

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Minimum Mandatory Qualifications	
Degree Level	Associate Degree in Business Administration, Marketing, Digital Media Design, or the equivalent; and
Junior-level	(Between) 1 – 4 years of experience as described above: or
Mid-Level Minimum Mandatory Qualifications	
Degree Level	Associate Degree in Business Administration, Marketing, Digital Media Design, or the equivalent; and
Mid-level	(More than) 4 years and (less than) 7 years of experience as described above; or
Senior-Level Minimum Mandatory Qualifications	
Degree Level	Associate Degree in Business Administration, Marketing, Digital Media Design, or the equivalent; and
Senior-level	(More than) 7 years of experience as described above.
Optional/Desirable Requirements (Does NOT replace the Mandatory Qualifications above)	
Degree Level	Bachelor's or other Degree in Business Administration, Marketing, Digital Media Design, or the equivalent
Professional Certifications, any one	List any related IT related certifications, if any.

17. Electronic Content Management (ECM) Services

Brief Description of Services: Services include the capture, storage, retrieval, and management of documents, records, emails, electronic communications and other documents created by agency. Typical services include participation in the implementation, operation, administration, and configuration of the ECM platform. Provides expertise and guidance to business units regarding ECM operations, system/user configurations and related records and document management matters (i.e. taxonomies, metadata, user configuration, groups/roles and security settings); ECM solutions planning, coordinating and overseeing activities related to integration of ECM applications into an agency's information system.

Expected typical skills may include:

1. Analyze content and gather ECM business requirements resulting in meeting customer needs and determine opportunities to streamline and automate business process.
2. Leads project planning sessions with clients, business analysts and team members to gather, analyze, and document business requirements and objectives.
3. Coordinates project activities, conducts systems research and analysis, recommends alternatives, and ensures implementation.
4. Educates users on systems and processes and acts as an IT consultant.
5. Assures appropriate knowledge transfer to customers and internally, maintains system and user documentation, instructions and procedures, and demonstrates best practices
6. Provides systems analysis and design to meet functional and organizational requirements
7. Develops, coordinates, and implements test plans to test business and functional requirements during solution development and participates in system testing individually
8. Directs and executes system and/or acceptance testing.
9. Works with business units and IT teams to define processes for conducting testing and reviewing results.
10. Leads users in the assessment of vendor solution options, identifying risks, cost/benefits, and on-going support considerations.

Table 1

Qualified Personnel/Staff Minimum Mandatory Qualifications	
Junior-Level Minimum Mandatory Qualifications	
Degree Level	Not applicable for this category
Junior-level	(Between) 1 – 4 years of experience as described above
Mid-Level Minimum Mandatory Qualifications	
Degree Level	Not Applicable for this category.
Mid-level	(More than) 4 years and (less than) 7 years of experience as described above.
Senior-Level Minimum Mandatory Qualifications	
Degree Level	Not Applicable for this category.
Senior-level	(More than) 7 years of experience as described above.
Optional/Desirable Requirements (Does NOT replace the Mandatory Qualifications above)	

Degree Level	Bachelor's Degree in Business or related field such as accounting, business, finance, marketing, management, information technology or a similar area
Professional Certifications, any one	List any related IT related certifications, if any.

ARTICLE 27 – MERGER, SCOPE AND ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement supersede any conflicting term or condition in a PSA. The terms of a Purchase Order supersede any conflicting term or condition in a PSA. Neither Contractor nor a Procuring Entity shall purport to delete or modify any term of this Agreement in the terms and conditions of a PSA or Purchase Order. An invalid provision in this Agreement or a PSA is severable. If a clause, sentence, or paragraph of this Agreement or a PSA is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement or a PSA, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants, and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 28 – NOTICES

All deliveries, notices, requests, demands, or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For State Purchasing Agent

State Purchasing Agent P.O. Drawer 6850
Santa Fe, NM 87502-0110

For DoIT

Eve Banner, Acting ASD Director and CFO
Department of Information Technology
Phone: 505-827-0023
Email: eve.banner@doit.nm.gov
P.O. Box 22550
Santa Fe, NM 87502-2550

For CONTRACTOR

Arijit Banerjee, CEO
Xynergy, Inc
315-A Alameda Blvd NE
Albuquerque, NM 87113
Phone: 505-820-8357 ext. 10
Email: arijit@xynergy.com

Any change to the Notice individual or the address shall be effective only in writing.

ARTICLE 29 – GENERAL PROVISIONS

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:

1. Civil and Criminal Penalties. 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.
2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor 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, 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.
3. Nondiscrimination. Contractor, and all deliverables under this Agreement, shall comply, as applicable, with the Federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (Public Law 101-336), and every other federal and state law that prohibits discrimination or mandates accommodation for disability, injury, sickness, disease or specified hardship. Any deliverable constituting an interactive or informational system or display solely for use or consumption by a public employee or employer shall comply with accessibility standards for a comparable system or display used or consumed by a member of the public or by a private employer.
4. 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 Procuring Entity.

5. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. Contractor agrees to submit to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement. These provisions do not preclude the parties to a PSA from mutually agreeing, at the time a dispute arises, to resolve the particular dispute through mediation or binding arbitration. Any agreement to submit a prospective dispute to binding arbitration is null and void.

6. Waiver. 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 expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

7. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

8. Background Check. Contractor shall comply with any background check requirements and processes required by law or specified by a Procuring Entity upon inception of a Professional Services Agreement and before performing any Services for the Procuring Entity.

9. Work Location. Except as expressly authorized by a Procuring Entity and the State of New Mexico Office of Cybersecurity in an approved, written exception request, Contractor, its subcontractors and any of their personnel must physically perform any services contracted by the State of New Mexico in the United States. This includes any work that is performed offsite or remote. A PSA may specify more restrictive work location requirements.

ARTICLE 30 – SURVIVAL

Provisions of this Agreement, and of any PSA, that by their intent, nature or effect are enforceable post-termination, shall survive the termination notwithstanding the cause of termination of this agreement. This includes, but is not limited to, the terms of the Articles titled Intellectual Property, Intellectual Property Ownership, Confidentiality, and the terms of all warranties, licenses, and escrow agreements.

ARTICLE 31 – CALCULATION OF TIME

Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 32 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 33 – ADDITIONAL PROVISIONS

1. **Administrative Reporting.**

The Contractor agrees to provide a Utilization Report to SPD in accordance with the following schedule:

Period End

September 30

December 31

March 31

June 30

Report Due

October 31

January 31

April 30

July 31

The periodic report shall include the gross total sales for the period subtotaled by Procuring Entity name. The report shall be accompanied by a check payable to the SPD for an amount equal to three-quarters of one percent (1.00%) of the total sales for the period. The Contractor agrees to provide a utilization report to the agreement administrator in accordance with the following schedule:

Period End

September 30

December 31

March 31

June 30

Report Due

October 31

January 31

April 30

July 31

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@gsd.nm.gov

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories below may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which will be deemed to be a true and original signature hereunder.

By: Arijit Banerjee Date: 1/24/2024
Arijit Banerjee, CEO
Xynergy, Inc

Approved for legal sufficiency:

By: Kyle Duffy Date: 1/24/2024
Kyle Duffy, Deputy General Counsel
Office of Governor Michelle Lujan Grisham

Approved for financial sufficiency:

By: Eve Banner Date: 1/24/2024
Eve Banner, Chief Financial Officer
New Mexico Department of Information Technology


The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

BTIN ID Number: 02-481831-00-3

By: Ann Marie Lucero Date: 1/24/2024
Taxation and Revenue Department

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

Approved for compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By:  Date: 1/24/2024
Raja Sambandam, Acting Cabinet Secretary and State Chief Information Officer
New Mexico Department of Information Technology

This Agreement has been approved by the General Services Department, State Purchasing Division:


By:  Date: 1/25/2024
State Purchasing Agent
State Purchasing Division
Effective 2/9/24

EXHIBIT A – UNIT RATE PRICE SHEET

IT Professional Service Category No.	IT Professional Service Category	Unit Rate Type (e.g. \$ per-hour, \$ per-device, \$ per-user, \$ per-license, \$ per-event)*	Maximum Unit Rate (\$) for the IT Professional Service Category Experience Level					
			ONSITE			OFFSITE		
			A. Junior Level	B. Middle Level	C. Senior Level	D. Junior Level	E. Middle Level	F. Senior Level
1	Application Support and Development Services	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
2	IT Project Management, Planning, & Analysis Services	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
3	Database Management Services and Business Intelligence	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
4	Geospatial Technological Services							
5	End User Support Services							
6	Systems Administration Services							
7	Network Services							
8	IT Security Services							
9	Independent Verification and Validation Service							
10	Computer Aided Design							
11	IT Research and Advisory Services	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
11	IT Research and Advisory Services as a Subscription Service	Complete APPENDIX E-1						
12	**IT Training Services	Complete APPENDIX E-2						
13	IT Business and Process Consulting Services	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
14	Marketing Services	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
15	E-Rate Consulting Services							
16	IT Professional Proposal and/or Grant Writing Services							
17	Electronic Content Management (ECM) Services	per-hour	\$125	\$150	\$195	\$100	\$125	\$175
18	Data Conversion Services							

APPENDIX E-1 – Onsite Cost Form (Category 11)				
For IT Research and Advisory Services as a Subscription Service ONLY				
All responses MUST use the format provided				
Class Name	Duration	Skill Level (introductory, intermediate, advance, etc.)	Max. number of Students	Maximum Cost (\$) Per Class for Each Student
SEO strategy	120 minutes	Advanced	100	\$799
Full-funnel dashboard	120 minutes	Advanced	100	\$799
Marketing automation	120 minutes	Advanced	100	\$799

APPENDIX E-2 – Onsite Cost Form (Category 12)
FOR IT TRAINING SERVICES ONLY

All responses **MUST** use the format provided

Class Name	Duration	Skill Level (introductory, intermediate, advance, etc.)	Max. number of Students	Maximum Cost (\$) Per Class for Each Student
Microsoft Office Basics	90 minutes	Introductory, intermediate	100	\$499
Business Skills-growth mindset	90 minutes	Intermediate, advanced	100	\$599
CRM Basics	90 minutes	Introductory, intermediate	100	\$499
Adobe Creative Suite	90 minutes	Introductory, intermediate	100	\$499
SEO Basics	90 minutes	Introductory, intermediate	100	\$499
Copywriting with AI	90 minutes	Introductory, intermediate	100	\$499
Content Management Systems	90 minutes	Introductory, intermediate	100	\$499

Certificate Of Completion

Envelope Id: B9CE2F3A6ED142FCAC63ABAB0AB259A1

Status: Completed

Subject: DW 30-00000-23-00080 - Xynergy Inc

Source Envelope:

Document Pages: 38

Signatures: 6

Certificate Pages: 6

Initials: 2

AutoNav: Enabled

Envelopeld Stamping: Enabled

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Envelope Originator:

Raelynn Lujan

1100 S Saint Francis Dr

Santa Fe, NM 87502

Raelynn.Lujan@gsd.nm.gov

IP Address: 164.64.62.10

Record Tracking

Status: Original

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Raelynn.Lujan@gsd.nm.gov

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Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events**Signature****Timestamp**

Michael Saavedra

Michael.Saavedra@gsd.nm.gov

New Mexico General Services

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

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Arijit Banerjee

arijit@consumer51.com

CEO

CONSUMER51 LLC

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 76.124.68.114

Sent: 1/24/2024 10:37:03 AM

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Signed: 1/24/2024 12:33:08 PM

Electronic Record and Signature Disclosure:

Accepted: 1/24/2024 12:28:58 PM

ID: a25e517e-e3fc-487f-9e87-9c30753f898b

Ann Marie Lucero

AnnMarie.Lucero@tax.nm.gov

District Mgr.

State of New Mexico Taxation and Revenue

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 164.64.133.192

Sent: 1/24/2024 12:33:11 PM

Viewed: 1/24/2024 4:27:05 PM

Signed: 1/24/2024 4:27:50 PM

Electronic Record and Signature Disclosure:

Accepted: 6/2/2020 2:28:54 PM

ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910

Kyle Duffy

Kyle.Duffy@exec.nm.gov

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style





Using IP Address: 164.64.112.246

Sent: 1/24/2024 4:27:53 PM

Viewed: 1/24/2024 4:37:46 PM

Signed: 1/24/2024 4:37:53 PM

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
Accepted: 9/26/2023 11:10:43 AM ID: 89fad968-5a4e-498e-bc91-4e3924a7ad14		
Eve Banner Eve.Banner@doit.nm.gov Eve T. Banner, CFO DoIT Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 98.249.77.21	Sent: 1/24/2024 4:37:56 PM Viewed: 1/24/2024 5:39:23 PM Signed: 1/24/2024 5:40:58 PM
Electronic Record and Signature Disclosure: Accepted: 11/21/2023 8:09:47 AM ID: f406a1f3-7daa-4051-b7b8-a053785aa116		
Raja Sambandam Raja.Sambandam@doit.nm.gov Acting Cabinet Secretary and State CIO State of New Mexico Security Level: Email, Account Authentication (None)	 Signature Adoption: Drawn on Device Using IP Address: 73.127.205.92 Signed using mobile	Sent: 1/24/2024 5:41:01 PM Viewed: 1/24/2024 8:31:43 PM Signed: 1/24/2024 8:32:29 PM
Electronic Record and Signature Disclosure: Accepted: 9/15/2021 11:35:38 AM ID: 3b3f69f7-26a4-4aba-b349-c1963a025f79		
Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 164.64.62.10	Sent: 1/24/2024 8:32:32 PM Viewed: 1/25/2024 6:52:44 AM Signed: 1/25/2024 6:52:49 AM
Electronic Record and Signature Disclosure: Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c		
Raelynn Lujan raelynn.lujan@gsd.nm.gov New Mexico General Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 1/25/2024 6:52:52 AM Viewed: 2/9/2024 9:09:25 AM Signed: 2/9/2024 9:09:49 AM
Electronic Record and Signature Disclosure: Accepted: 6/26/2020 4:27:38 PM ID: 6aae9b5a-2aef-4297-a7b0-359c22309d31		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	1/24/2024 8:19:18 AM
Envelope Updated	Security Checked	2/6/2024 2:59:47 PM
Certified Delivered	Security Checked	2/9/2024 9:09:25 AM
Signing Complete	Security Checked	2/9/2024 9:09:49 AM
Completed	Security Checked	2/9/2024 9:09:49 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

Signature: XAVIER VIGIL
XAVIER VIGIL (Jan 27, 2025 11:57 MST)

Email: xivigil@santafenm.gov

25-0029 Xynergy, inc.

Final Audit Report

2025-01-27

Created:	2025-01-27
By:	XAVIER VIGIL (xivigil@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAH-tspkK5WS--vN4ZfRu6yRPOIk7m2Jcr

"25-0029 Xynergy, inc." History

 Document created by XAVIER VIGIL (xivigil@santafenm.gov)

2025-01-27 - 6:52:23 PM GMT- IP address: 63.232.20.2

 Document e-signed by XAVIER VIGIL (xivigil@santafenm.gov)

Signature Date: 2025-01-27 - 6:57:03 PM GMT - Time Source: server- IP address: 63.232.20.2

 Document emailed to ANDREA SALAZAR (asalazar@santafenm.gov) for signature

2025-01-27 - 6:57:06 PM GMT

 Email viewed by ANDREA SALAZAR (asalazar@santafenm.gov)

2025-01-27 - 8:18:40 PM GMT- IP address: 104.47.64.254

 Document e-signed by ANDREA SALAZAR (asalazar@santafenm.gov)

Signature Date: 2025-01-27 - 8:18:48 PM GMT - Time Source: server- IP address: 63.232.20.2

 Agreement completed.

2025-01-27 - 8:18:48 PM GMT