

CITY OF SANTA FE

"REQUEST FOR PROPOSALS"

**WEB CONTENT MANAGEMENT SYSTEM FOR
CITY OF SANTA FE WEBSITE**

RFP #'12/02/P

PROPOSAL DUE:

August 12, 2011

2:00 P.M.

PURCHASING OFFICE

CITY OF SANTA FE

2651 SIRINGO ROAD

BUILDING "H" SANTA FE,

NEW MEXICO 87505

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Attachments:

1. Instructions Relating to Local Preference Certification Form
2. Local Preference Certification Form
3. Sample Contract
4. Minimum Wage Ordinance

REQUEST FOR PROPOSALS

PROPOSAL NUMBER '12/02/P

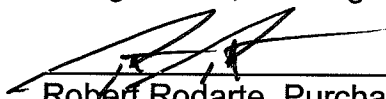
Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, August 12, 2011.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

WEB CONTENT MANAGEMENT SYSTEM FOR CITY OF SANTA FE WEBSITE

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.



Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: 07/06/11
To be published on: 07/12/11

Received by the Albuquerque Journal Newspaper on: 07/06/11
To be published on: 07/12/11

PROPOSAL SCHEDULE

RFP # '12/02/P

- | | | |
|----|--|---|
| 1. | Advertisement | July 12, 2011 |
| 2. | Issuance of RFP'S: | July 12, 2011 |
| 3. | Receipt of proposals: | August 12, 2011 at 2:00 p.m.
local prevailing time.
Purchasing Office 2651
Siringo Road Bldg., "H"
Santa Fe, New Mexico
87505 (505) 955-5711 |
| 4. | Evaluation of proposals: | August 17, 2011 |
| 5. | Interviews: | August 22, 2011 |
| 6. | Recommendation of award
to Finance Committee: | September 6, 2011 |
| 7. | Recommendation of award
to City Council: | September 14, 2011 |

DATES OF CONSIDERATION BY FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The City of Santa Fe (herein called "City"), invites firms to one original and ten copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, August 12, 2011.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '12/02/P

Title of the proposal: Web Content Management System for City of Santa Fe
Website

Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

2. PREPARATION OF PROPOSAL

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

3. ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretations should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

4. LAWS AND REGULATIONS

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the city reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed.

6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

7. LOCAL PREFERENCE

APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The preference for proposals shall be 1.10 for local.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

8. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. GENERAL

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

2. ASSIGNMENT

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. VARIATION IN SCOPE OF WORK

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. INVOICING

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

7. METHOD OF PAYMENT

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

8. **DEFAULT**

The city reserves the right to cancel all or any part of this order without cost to the city if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the 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 suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. **NON-DISCRIMINATION**

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. **NON-COLLUSION**

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

SCOPE OF SERVICES
'12/02/P
WEB CONTENT MANAGEMENT SYSTEM FOR
CITY OF SANTA FE WEBSITE

The Contractor will provide the following services for the city of Santa Fe:

EXHIBIT "A"		
Deliverables		
Deliverable One	Due Date	Compensation
Contractor will provide a live website using the contractor's web content management system (CMS) to include the following: 1. CMS must be easily updatable by staff in all city departments and will include the capacity for staff to add, remove and update content using tools and templates that do not require extensive knowledge of web development languages or technical structure. 2. CMS will include the capacity to add an unlimited number of pages including password protected pages. 3. CMS will include the following modules: Calendars, Email Notification, News and Announcements, Online Forms, Online Payments, Staff Directory, Archives, Document Center, File Sharing, FTP, Bid and RFP posting and tracking, Online job application, Complaints and Request Tracker, Frequently Asked Questions, Quick Links, Staff Directory, Resource Directory, Slide Show, Photo Gallery, Intranet 4. CMS will include the capacity to process,	Due on go-live date or December 31, 2011 - whichever occurs last.	To be negotiated

manipulate, import and export data to and from modules. This Deliverable relates to Request Tracker in particular but does not exclude other data collection and management modules. 5. CMS will use open database architecture for ease of integration with the city's existing applications, including but not limited to GIS, HTE and Utility Billing. 6. CMS will have the capacity for video streaming, webcasting and video downloads. 7. CMS will include a website survey for collecting information about the website's performance from public users. 8. CMS will have the ability to use current interactive and social networking mediums such as Facebook Twitter and RSS feeds, as well as flexibility to add these types of features in the future. 9. CMS network system will have the capacity to handle peak traffic volumes of 100 mb/sec. 10. CMS will have the capacity for extensive polling and reporting on web site usage including DNS services, weekly web traffic statistics, website maintenance activity and statistics on content type including updates, downloadable documents, web pages, calendars and broken links. 11. CMS will have the capacity for user authentication and authorization for access. 12. CMS will give the public access to all website features without having to use a specific browser; that is, the web interface works with commonly used browsers found on Windows, Linux and Mac computer systems.	
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13. CMS will include pages and features that are compatible with limited bandwidth access by the public.			
14. CMS will include options that can accommodate individuals with disabilities in accordance with the Americans with Disabilities Act.			
15. CMS will use an email interface, if any, that is not dependent on a specific email client.			
16. CMS must include a robust search feature with the capacity to add an unlimited number of redirects in support of the search function.			
Deliverable Two	Due Date	Compensation	
Contractor will provide 24/7, 365 days per year website hosting. Contractor must have adequate redundant equipment to minimize down time.	Due on go-live date or December 31, 2011 - whichever occurs last.	To be negotiated	
Deliverable Three	Due Date	Compensation	
Contractor will provide a dedicated server for the city of Santa Fe, New Mexico website/web content management system.	Due on go-live date or December 31, 2011 - whichever occurs last.	To be negotiated	
Deliverable Four	Due Date	Compensation	
Contractor will provide technical support to include: connectivity monitoring, hardware & data redundancy for maximum up-time, and telephone and online support services for city staff.	Due on go-live date or December 31, 2011 - whichever occurs last.	To be negotiated	
Deliverable Five	Due Date	Compensation	
Contractor will provide antivirus protection and data	Due on go-live date	To be	

security. Site security and protection must be maintained using appropriate firewall, intrusion detection, and 128-bit encryption over Secure Socket Layer technology. Site must have multiple-level security, completely contained within the website infrastructure and not reliant on the existing city network security or peer-to-peer connectivity.	or December 31, 2011 - whichever occurs last.	negotiated
Deliverable Six		
The contractor will integrate the website design provided by the city of Santa Fe into the new website and will support and restrict users to the design throughout the website.	Due Date Due on go-live date or December 31, 2011 - whichever occurs last.	Compensation To be negotiated
Deliverable Seven		
The contractor will provide training to employees designated by the city who will be responsible for updating department web pages.	Due Date Due on go-live date or December 31, 2011 - whichever occurs last.	Compensation To be negotiated
Deliverable Eight		
Contractor must keep and provide easily searchable access to historical or archival copies of all web pages.	Due Date Due on go-live date or December 31, 2011 - whichever occurs last.	Compensation To be negotiated

SUBMITTAL REQUIREMENTS

'12/02/P

PROPOSAL FORMAT

To provide for ease and uniformity in the evaluation of proposals, the Proponent must submit a proposal with the following sections and content. Failure to comply with this prescribed format will result in the Proponent being disqualified from selection.

1. Conformance to Scope of Services – Proponents shall respond item-by-item to each of items in the Scope of Services.
2. Customer Support
 - i. Provide a policy statement and explanation of Proponent's approach to web content management system that allows all the services listed in the scope of services
 - ii. Provide an organizational chart indicating how the firm would staff and structure the proposed team for all phases of the content management system
 - iii. Provide a resume for each proposed team member, specifically demonstrating experience on projects of similar scope and complexity
3. Professional Experience:
 - i. Provide an integrating design into the web content management system
 - ii. Timeline for major developments / events
 - iii. References and contact information for three (3) clients
4. Business Information. Please provide:
 - i. Location of principle office for this project
 - ii. List of all applicable licenses
 - iii. Length of time in business
 - iv. Current size and capabilities
 - v. Customer Base
 - vi. Provide contact information for Agent for Service of Process
5. Copy of New Mexico Taxation and Revenue gross receipts number
6. Copy of City of Santa Fe Business Registration
7. Pricing Schedules – An itemized list of all services
8. Submit one original and four (4) copies of the proposal

The proponent is welcome to submit any other information that may assist the City in making a selection.

FAILURE to adequately address and submit the above requirements may constitute forfeiture of the proposal, as to be determined by the City Purchasing Agent.

NOTE: WRITTEN EXPLANATIONS WILL BE REQUIRED WHERE REQUESTED REGARDLESS OF COMPLIANCE TO SCOPE OF SERVICES.

EVALUATION CRITERIA & WEIGHTED VALUES

*Evaluation Points 1-5

1. Poorly addresses, not adequate
2. Insufficiently addressed capabilities questionable
3. Adequate response, capable
4. Good response, capabilities more than adequate
5. Exceed expectations, superior response

Evaluation Criteria

All proposals will be evaluated and rated in accordance with the following criteria and the indicated weighted value of the criteria.

Criteria	Weighted Value	Eval. Pts. 1-2-3-4-5	Total	Max Score
Service Proposal addresses web content management system and maintenance.	25%	_____	_____	125
Experience Proponent demonstrates experience on projects of similar scope and complexity as requested herein.	25%	_____	_____	125
Cost The price is commensurate with the value offered by the proponent.	20%	_____	_____	100
Depth & Breadth of Staff The proponent has appropriate staff to fulfill the obligations and training of the project.	15%	_____	_____	75
Expertise Proponent's expertise in recommending and communicating appropriate technical and aesthetic solutions is evidenced by proposal and references.	15%	_____	_____	75
	100			500

**PLEASE NOTE THAT THE LOWEST COST IS NOT THE SOLE CRITERION FOR
RECOMMENDING CONTRACT AWARD**

Proposal evaluation team will consist of the following individuals:

Robert Rodarte – Purchasing or Representative
Sevastian Gurule – Constituent Services or Representative
Carla Lopez – Marketing & Promo or Representative
Joe Abeyta – Multi Media or Representative
Joyce Bond, Public Information or Representative
Regina Wheeler, Solid Waste or Representative
Denise Salazar Vigil, GIS or Representative
Melissa Byers, City Attorney's or Representative
Dan Esquibel, Land Use or Representative
Lois Amador, Human Resources or Representative

Firm _____

Name _____

Date _____

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer**. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**
2. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. **Principal Office and location must be stated:** To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.
4. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. **Definition:** The following definition applies to this preference.

A local business is an entity with its Principal office and place of business located in Santa Fe County.

A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

Additional Documentation: If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.

LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: _____

Business Name: _____

Principal Office: _____
Street Address City State Zip Code

City of Santa Fe Business License # _____ (Attach Copy to this Form)

Date Principal Office was established: _____ (Established date must be six months before date of Publication of this RFP or RFB).

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: _____

Printed Name: _____

Title: _____ Date: _____

Subscribed and sworn before me by _____ this _____, day of _____

My commission expires _____

Notary Public

SEAL

YOU MUST RETURN THIS FORM WITH YOU OFFER

SAMPLE AGREEMENT FOR RFP

City of Santa Fe

Information Technology
Agreement

Contract No. _____

THIS Information Technology Agreement ("Agreement") is made by and between the City of Santa Fe, hereinafter referred to as the "City" and [Insert Contractor Name], hereinafter referred to as the "Contractor" and 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*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the City has selected the Contractor as the offeror most advantageous to the City;

WHEREAS, all terms and conditions of the RFP 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" shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative ("Executive Level Representative") of the City.
- B. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work.
- C. "Deliverable" shall mean 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.
- D. "DoIT" shall mean the Department of Information Technology.
- E. "Escrow" shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.
- F. "Enhancement" means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an Error Correction. After conferring with City, an Enhancement may be identified as minor or major.
- G. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the City's executives.
- H. "Know How" shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- I. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

- J. "Independent Verification and Validation ("IV&V")" shall mean 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 City.
- K. "Payment Invoice" shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.
- L. "Performance Bond" shall mean a surety bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract.
- M. "Project" shall mean a temporary process 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. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is [Insert Name of Project, if applicable; otherwise delete sentence].
- N. "Project Manager" shall mean a qualified person from the City responsible for all aspects of the Project or the administration of this Agreement. Under the terms of this Agreement, the Project Manager shall be [Insert Name] or designated representative.
- O. "Quality Assurance" shall mean 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.

ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work as outlined in **Exhibit A**, attached hereto and incorporated herein by reference.
- B. Performance Measures. Contractor shall substantially perform the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the City may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the City of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the City from exercising its rights pursuant to **Article 6**.
- C. Schedule. The due dates, as set forth in Exhibit A, shall not be altered or waived by the City without prior written approval, through the Change Management process, as defined in **Article 14**.
- D. License. The Contractor hereby grants City a non-exclusive, irrevocable license to use, modify and copy (INSERT NAME OF SOFTWARE) and any and all updates corrections and revisions as defined in Article 2 of Exhibit A for the term of this Agreement.

The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement,

and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1) Contractor agrees to maintain, at contractor's own expense, a copy of the software source code to be kept by an escrow agent and to list the City as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the City. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the software at the current revision level. Included with the media shall be all associated documentation which will allow the City to top load, compile and maintain the software in the event of a breach.

2) If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the licensed software it provided the Agency; or, if this Agreement is terminated, or if the Contractor breaches this Agreement, the Contractor shall make available to the City: 1) the latest available licensed software program source code and related documentation meant for the licensed software provided or developed under this Agreement by the Contractor and listed as part of the purchase system; 2) the source code and compiler/utilities necessary to maintain the system; and, 3) related documentation for software developed by third parties to the extent that the Contractor is authorized to disclose such software. In such circumstances, City shall have an unlimited right to use, modify and copy the source code and documentation.

ARTICLE 3 - COMPENSATION

A. **Compensation Schedule.** The City shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, **less retainage as identified in Paragraph D.**

B. **Payment.** The total compensation under this Agreement shall not exceed [Insert Dollar Amount] [CHOICE #1- either use "excluding New Mexico gross receipts taxes" OR "including New Mexico gross receipts tax"].

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. **Taxes.**

[CHOICE #1 - Use either: " The Contractor shall be reimbursed by the City for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any

authority" or "The Contractor shall not be reimbursed by the City for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the Contractor by any authority".] The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. The City shall retain **twenty percent (20%)** of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, **less twenty percent (20%) retainage**.

B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment 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 A;
- 2.) Complies with the terms and conditions of the RFP;
- 3.) Meets the performance measures for the Deliverable(s) 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 Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. **Rejection.** Unless the Executive Level Representative gives notice of rejection within the fifteen (15) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) 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 ten (10) 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 City may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the City may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY AND THE CONTRACTOR, WHICHEVER OCCURS LAST. This Agreement shall terminate on [Insert Termination Date], unless terminated pursuant to Article 6. The term of this Agreement, including all extensions, shall not exceed one calendar year.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

- A. **General.** By the either Party upon written notice to be delivered to the other party not less than ten (10) business days prior to the intended date of termination.
- B. **Appropriations.** By the City, 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 this Agreement. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City terminates this Agreement pursuant to this subsection, the City shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.

C. Obligations and Waiver. By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

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

- 1.) Transfer, deliver, and/or make readily available to the City property in which the City has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the City;
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the City;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition;
- 4.) Take such action as the City may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
- 5.) Agree that the City is not liable for any costs arising out of termination and that the City 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 City programs;
- 7.) In the event that this Agreement 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 City's receipt of program funds from any governmental agency, the Contractor shall remit to the City the full amount of the reduction;
- 8.) Should this Agreement terminate due to the Contractor's default, the Contractor shall reimburse the City for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred;
- 9.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall assist and cooperate with the City in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the City or created by the Contractor under this Agreement, to the City, 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 Project Manager, the Contractor shall provide to the City a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the City or created by the Contractor under this Agreement.

B. City. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the City shall 1) Retain

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

B. The indemnification obligation under this Agreement 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 payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the City, as necessary, to satisfy any outstanding claim that the City may have against the Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership.

Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the City shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the City shall be considered the creator and owner of such Know How. The City shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the City without the express written authorization of the City. Contractor shall notify the City, within fifteen (15) business days, of the creation of any 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 Intellectual Property vests in the City and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other

than the City. If, by judgment of a court of competent jurisdiction, Intellectual Property, Know How, or Know How Rights are not deemed to be created or owned by the City, Contractor hereby acknowledges and agrees to grant to the City, 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, at its own expense, the City, and/or any other body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorneys fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City shall:

- 1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
- 2.) Work with the Contractor to control the defense and settlement of the claim, as allowed under the law; and
- 3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. **City 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 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.

ARTICLE 11 - WARRANTIES

A. **General.** The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for four (4) years after Acceptance by the Executive Level Representative and implementation by the City. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the City, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City 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 City approval. The City, 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 City reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the City, meeting the City's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by 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; 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, the Contractor shall immediately disclose such fact to the City.

ARTICLE 14 - CHANGE MANAGEMENT

A. **Changes.** Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

- 1) Deliverable requirements;
- 2) Compensation due under the terms of this Agreement; or
- 3) Due Date of any Deliverable, as outlined in Exhibit A.

B. **Change Request Process.** In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria: 1) The Project Manager shall draft a written Change Request for Executive Level Representative review and approval to include: the name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change, and 2) The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change requests, once approved, become a part of the contract and become binding as a part of the original contract.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

If Independent Validation and Verification ("IV&V") services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to: 1) Providing project documentation; 2) Allowing the IV&V vendor to sit in on project meetings; and 3) Supplying the IV&V vendor with any other material as directed by the Project Manager.

ARTICLE 16 – DEFAULT/BREACH

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

ARTICLE 17 – EQUITABLE REMEDIES

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

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the City's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the City or for losses occasioned by the City's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 19 – ASSIGNMENT

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

ARTICLE 20 – SUBCONTRACTING

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

ARTICLE 21 – RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. 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.

ARTICLE 22 – CONFIDENTIALITY

Any confidential information provided to the contractor by the agency or, developed by the Contractor based on information provided by the agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the City within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the City will result in direct, special and incidental damages.

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 the Agreement. 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 - RECORDS AND AUDIT

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

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 26 – 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 the contract, Contractor certifies, by signing this agreement, 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 no later than July 1, 2010 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: <http://insurenwnewmexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (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 offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 27 — EMPLOYEE PAY EQUITY REPORTING

A. Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

C. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

ARTICLE 28 - MERGER, SCOPE, ORDER OF PRECEDENCE

- A. **Severable.** The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement 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, 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 29 – 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 CITY

[Insert Name of Individual, Position and Agency Name, Telephone Number]

[Insert Agency Mailing Address]

For CONTRACTOR

[Insert Name of Individual, Position]

[Insert Address]

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

ARTICLE 30– GENERAL PROVISIONS

- A. **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.
- B. **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 _____, pertaining to equal employment opportunity. In accordance with all such laws of the, 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.

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

D. 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 the county where the City's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

E. 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.

F. 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.

ARTICLE 31 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 32 – TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days; 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 33 – 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.

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

CITY OF SANTA FE:

ROBERT ROMERO,
CITY MANAGER (under \$50,000)

DAVID COSS, MAYOR (over \$50,000)

DATE

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

Judith Arner for

GENO ZAMORA, CITY ATTORNEY

APPROVED:

5/20/11

KATHRYN RAVELING,
FINANCE DIRECTOR

Business Unit/Line Item

EXHIBIT "A" Deliverables		Due Date	Compensation
Deliverable One	Contractor will provide a live website using the contractor's web content management system (CMS) to include the following: 1. CMS must be easily updatable by staff in all city departments and will include the capacity for staff to add, remove and update content using tools and templates that do not require extensive knowledge of web development languages or technical structure. 2. CMS will include the capacity to add an unlimited number of pages including password protected pages. 3. CMS will include the following modules: Calendars, Email Notification, News and Announcements, Online Forms, Online Payments, Staff Directory, Archives, Document Center, File Sharing, FTP, Bid and RFP posting and tracking, Online job application, Complaints and Request Tracker, Frequently Asked Questions, Quick Links, Staff Directory, Resource Directory, Slide Show, Photo Gallery, Intranet 4. CMS will include the capacity to process, manipulate, import and export data to and from modules. This Deliverable relates to Request Tracker in particular but does not exclude other data collection and management modules. 5. CMS will use open database architecture for ease of integration with the city's existing applications, including but not limited to GIS, HTE and Utility Billing. 6. CMS will have the capacity for video streaming, webcasting and video downloads. 7. CMS will include a website survey for collecting information about the website's performance from public users. 8. CMS will have the ability to use current interactive and social networking mediums such as Facebook Twitter and RSS feeds, as well as flexibility to add these types of features in the future. 9. CMS network system will have the capacity to handle peak traffic volumes of 100 mb/sec. 10. CMS will have the capacity for extensive polling and reporting on web site usage	Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated

including DNS services, weekly web traffic statistics, website maintenance activity and statistics on content type including updates, downloadable documents, web pages, calendars and broken links. 11. CMS will have the capacity for user authentication and authorization for access. 12. CMS will give the public access to all website features without having to use a specific browser; that is, the web interface works with commonly used browsers found on Windows, Linux and Mac computer systems. 13. CMS will include pages and features that are compatible with limited bandwidth access by the public. 14. CMS will include options that can accommodate individuals with disabilities in accordance with the Americans with Disabilities Act. 15. CMS will use an email interface, if any, that is not dependent on a specific email client. 16. CMS must include a robust search feature with the capacity to add an unlimited number of redirects in support of the search function.		
Deliverable Two	Due Date	Compensation
Contractor will provide 24/7, 365 days per year website hosting. Contractor must have adequate redundant equipment to minimize down time.	Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated
Deliverable Three	Due Date	Compensation
Contractor will provide a dedicated server for the city of Santa Fe, New Mexico website/web content management system.	Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated
Deliverable Four	Due Date	Compensation
Contractor will provide technical support to include: connectivity monitoring, hardware & data redundancy for maximum up-time, and telephone and online support services for city staff.	Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated

Deliverable Five		Due Date	Compensation
Contractor will provide antivirus protection and data security. Site security and protection must be maintained using appropriate firewall, intrusion detection, and 128-bit encryption over Secure Socket Layer technology. Site must have multiple-level security, completely contained within the website infrastructure and not reliant on the existing city network security or peer-to-peer connectivity.		Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated
Deliverable Six		Due Date	Compensation
The contractor will integrate the website design provided by the city of Santa Fe into the new website and will support and restrict users to the design throughout the website.		Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated
Deliverable Seven		Due Date	Compensation
The contractor will provide training to employees designated by the city who will be responsible for updating department web pages.		Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated
Deliverable Eight		Due Date	Compensation
Contractor must keep and provide easily searchable access to historical or archival copies of all web pages.		Due on go-live date or December 31, 2011 – whichever occurs last.	To be negotiated

Living Wage Ordinance

Ordinance Number §28-1 28-1.12 SFCC 1987

Purpose:

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wage rates.

Who it affects:

- All businesses and non-profit organization required to have a business license or business registration issued by the City of Santa Fe.

Compliance:

- Affected businesses are required to pay employees an hourly wage of \$9.85 effective January 1, 2009.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the consumer price index for the western region for urban wage earners and clerical workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Non-profit organizations whose primary source of funds is from (Medicaid) waivers are exempt.

Prohibitions against retaliation and circumvention:

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within sixty days of the individual's assertion of or communication of information regarding rights raises a reputable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

Enforcement; Remedies:

- **Administrative Enforcement** - The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- **Criminal Penalty** - A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for Each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to which any such violation occurred.
- **Other remedies** - The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the Payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

Nonexclusive Remedies and Penalties - *The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.*

Posting and Publication:

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a city of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be considered grounds for suspensions, revocation, or termination of the business license or registration.

For further information, please contact the office of: Constituent Services at (505) 955-6949 or by Email at: constituentservices@santafenm.gov