

**ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 9/2/15**

ISSUE NO. 11

Request for approval of Award of RFB '15/32/B and contract to Sub Surface Contracting for the Douglas Street, Miller Street and Camino Escondido Water Main Replacement Project, CIP # 3046 for \$200,669.80 exclusive of NMGR. (Bill Huey)

Finance Committee – August 31, 2015
Public Utilities Committee – September 2, 2015
City Council – September 9, 2015

PUBLIC UTILITES COMMITTEE ACTION: Approved to forward to 9/9/15 City Council.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	x		
COUNCILOR MAESTAS	Excused		
COUNCILOR BUSHEE	x		
COUNCILOR DIMAS	Excused		
COUNCILOR IVES	x		

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 09/09/15
ITEM FROM FINANCE COMMITTEE MEETING OF 08/31/15

ISSUE:

6. Bid No. 15/32/B – Douglas Street, Miller Street, Camino Escondido Water Main Replacement Project and Agreement Between Owner and Contractor for Water Division; Sub Surface Contracting, Inc. (Bill Huey)

FINANCE COMMITTEE ACTION:

Approved as Consent item.

FUNDING SOURCE: 52350.57297

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	Excused		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

City of Santa Fe, New Mexico

memo

Date: August 4, 2015
To: Public Utilities Committee/Finance Committee
From: Bill Huey, Water Division Engineer Associate 
Via: Nick Schiavo, Public Utilities Department and Water Division Director ^{NSA}
RE: Request to award bid number '15/32/B for the Douglas St., Miller St., Camino Escondido Water Main Replacement Project to Sub Surface Contracting, Inc.

ITEM AND ISSUE:

The Water Division requests award of bid number '15/22/B for the Douglas St., Miller St., Camino Escondido Water Main Replacement Project, CIP 3046 to Sub Surface Contracting, Inc. for \$200,669.80 plus NMGR.

BACKGROUND AND SUMMARY:

The Water Division has identified the three locations in this project as requiring water main replacements for maintenance and fire protection improvements. These locations are: Douglas Street south of Arroyo Tenorio, Miller Street between Arroyo Tenorio and Camino de Las Animas, and Camino Escondido between E. Alameda Street and Canyon Road.

The contract period is ninety (90) days. The bids for this project were opened on July 21, 2015 and were subsequently evaluated for completeness and accuracy. The low bid in the amount of \$217,350.48 including NMGR was submitted by Sub Surface Contracting, Inc. A summary of the bids is provided below:

Bidders	Total Bid without NMGR	Bid Including Local or Veterans preference without NMGR
Engineer's Estimate	\$290,000	
Sub Surface Contracting, Inc.	\$200,669.80	\$180,602.82
Total Contracting Services, Inc.	\$286,502.00	\$286,502.00
Sasquatch, Inc.	\$319,572.00	\$287,614.80

Funds for this work are available in Business Unit, Line Item 52350.57297 in the amount of \$200,669.80 plus NMGR.

RECOMMENDATION:

The Water Division recommends:

- Review and approval of award of contract to Sub Surface Contracting, Inc. for construction of the Douglas St., Miller St., Camino Escondido Water Main Replacement Project under RFP No. '15/22/B for the total amount of \$217,350.48.
- Forwarding and recommendation of approval of award and contract to the Finance Committee for their consideration and approval at the August 31, 2015 meeting and to the Governing Body for their final consideration and approval at the September 9, 2015 meeting.

Robert Rodarte, Purchasing Officer

Date

cc:

CITY OF SANTA FE - SANGRE DE CRISTO WATER DIVISION
14/15 Douglas St., Miller St., Camino Escondido Water Main Replacement, CIP 33046, BID 15/22/B
Request For Bids, Bid Talley

BID ITEM	DESCRIPTION	UNIT	QTY.	Sub Surface Const., Inc.		Total Contract. Services, Inc		Sasquatch, Inc.	
				Santa Fe, NM		Santa Fe, NM		Santa Fe, NM	
				\$ 200,669.80		\$ 286,502.00		\$ 319,572.00	
				\$ 16,680.68		\$ 23,815.48		\$ 26,564.42	
				\$ 217,350.48		\$ 310,317.48		\$ 346,136.42	
10	4-inch D.I. Water Main with Restraints and Fittings	LF	500	\$ 47.00	\$ 23,500.00	\$ 35.00	\$ 17,500.00	\$ 85.80	\$ 42,900.00
20	6-inch D.I. Water Main with Restraints and Fittings	LF	1205	\$ 44.56	\$ 53,694.80	\$ 40.00	\$ 48,200.00	\$ 78.00	\$ 93,990.00
30	Imported Backfill	CY	320	\$ 25.00	\$ 8,000.00	\$ 20.00	\$ 6,400.00	\$ 15.60	\$ 4,992.00
40	20" Meter Box Relocation/Replacement	EA	1	\$ 1,100.00	\$ 1,100.00	\$ 700.00	\$ 700.00	\$ 1,560.00	\$ 1,560.00
50	Tapping Sleeve w/ Tap, 6" X 6"	EA	3	\$ 3,200.00	\$ 9,600.00	\$ 3,900.00	\$ 11,700.00	\$ 9,100.00	\$ 27,300.00
60	Tapping Sleeve w/ Tap, 10" X 6"	EA	1	\$ 3,500.00	\$ 3,500.00	\$ 4,800.00	\$ 4,800.00	\$ 10,400.00	\$ 10,400.00
70	3-way Fire Hydrant Assembly	EA	1	\$ 2,850.00	\$ 2,850.00	\$ 5,995.00	\$ 5,995.00	\$ 4,550.00	\$ 4,550.00
80	2-inch Valve and Two Valve Boxes	EA	1	\$ 1,650.00	\$ 1,650.00	\$ 2,500.00	\$ 2,500.00	\$ 1,300.00	\$ 1,300.00
85	4-inch Valve and Box	EA	1	\$ 850.00	\$ 850.00	\$ 1,800.00	\$ 1,800.00	\$ 1,560.00	\$ 1,560.00
90	6-inch Valve and Box	EA	4	\$ 1,150.00	\$ 4,600.00	\$ 2,200.00	\$ 8,800.00	\$ 1,950.00	\$ 7,800.00
100	Asphalt Pavement Removal & Disposal	SY	375	\$ 45.00	\$ 16,875.00	\$ 10.00	\$ 3,750.00	\$ 10.00	\$ 3,750.00
110	Concrete Curb and Gutter Removal & Disposal	LF	15	\$ 25.00	\$ 375.00	\$ 30.00	\$ 450.00	\$ 32.50	\$ 487.50
120	Concrete Sidewalk Removal & Disposal	SY	10	\$ 54.00	\$ 540.00	\$ 30.00	\$ 300.00	\$ 20.80	\$ 208.00
130	Replace City Street Pavement	SY	375	\$ 50.00	\$ 18,750.00	\$ 48.00	\$ 18,000.00	\$ 70.20	\$ 26,325.00
140	Replace Concrete Curb & Gutter	LF	15	\$ 25.00	\$ 375.00	\$ 100.00	\$ 1,500.00	\$ 42.90	\$ 643.50
150	Replace Concrete Sidewalk	SY	10	\$ 81.00	\$ 810.00	\$ 150.00	\$ 1,500.00	\$ 53.30	\$ 533.00
160	Service Replacement, 3/4"	EA	7	\$ 1,000.00	\$ 7,000.00	\$ 3,000.00	\$ 21,000.00	\$ 1,560.00	\$ 10,920.00
170	Service Replacement, 1 1/2"	EA	3	\$ 1,500.00	\$ 4,500.00	\$ 2,000.00	\$ 6,000.00	\$ 2,990.00	\$ 8,970.00
180	Service Transfer, 3/4" - 1"	EA	35	\$ 250.00	\$ 8,750.00	\$ 2,775.00	\$ 97,125.00	\$ 520.00	\$ 18,200.00
190	Service Transfer, 2"	EA	3	\$ 450.00	\$ 1,350.00	\$ 2,000.00	\$ 6,000.00	\$ 585.00	\$ 1,755.00
200	Service Saddle 3/4" - 1"	EA	36	\$ 350.00	\$ 12,600.00	\$ 300.00	\$ 10,800.00	\$ 650.00	\$ 23,400.00
210	Service Saddle 1 1/2" - 2"	EA	2	\$ 750.00	\$ 1,500.00	\$ 1,006.00	\$ 2,012.00	\$ 1,235.00	\$ 2,470.00
220	Service Tubing 3/4" - 1"	LF	220	\$ 20.00	\$ 4,400.00	\$ 10.00	\$ 2,200.00	\$ 36.40	\$ 8,008.00
230	Traffic Control	PER DAY	90	\$ 150.00	\$ 13,500.00	\$ 83.00	\$ 7,470.00	\$ 195.00	\$ 17,550.00
				SUB TOTAL	\$ 200,669.80		\$ 286,502.00		\$ 319,572.00
				NMGRT	\$ 16,680.68		\$ 23,815.48		\$ 26,564.42
				TOTAL	\$ 217,350.48		\$ 310,317.48		\$ 346,136.42
	LOCAL			Y		N		Y	
	VETERAN			N		N		N	
				BID	\$ 180,602.82		\$ 286,502.00		\$ 287,614.80
				Rank	1		2		3

CITY OF SANTA FE RFB PROCUREMENT CHECKLIST

Contractor Name: Sub Surface Contracting, Inc

Procurement Title: FY 14/15 Douglas St., Miller St., Camino Escondido Water Main Replacement, CIP # 3046

Solicitation RFB#: 15/32/B

Department Requesting/Staff Member PUD/ Water Division/ Bill Huey

Procurement Requirements:

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

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Departments Recommendation of Award Memo addressed to Finance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bid Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____

Bill Huey, Engineer

Department Rep Printed Name and Title

[Signature]
Department Rep Signature attesting that all information included

for [Signature] 08/21/15
Purchasing Officer attesting that all information is reviewed

REQUIRED DOCUMENTS FOR BID FILE*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Final Bid Document
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Final RFQ
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Copy of legal solicitation published in the newspaper, website, etc.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All addendums
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Plan holders list
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Complete evaluation score sheets
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Copies of all RFQ submittals
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Copies of all bid submittals
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bid Tab

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Non-Responsive/Non-Responsibility Form and correspondence or letters from Department to vendor regarding disqualifications |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Oral presentations (sign-in sheets, presentation materials, etc.) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Documentation sent to Bidders/Offerors and responses received regarding clarifications, decisions, negotiations, and/or best and final offers, etc. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Reference Reviews/Reference Check Questionnaires |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Individual evaluations included for each RFP. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Pricing evaluation |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Final overall evaluation matrix or summary of evaluator scores |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

AWARD*

YES N/A

- | | | |
|-------------------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Fully executed Memo to Committees from the Department with recommendation of award |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Winning bid (this is a copy that has all confidential/proprietary information excluded) |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract Award Notice |
| <input type="checkbox"/> | <input type="checkbox"/> | Email or notification sent to all Bidders/Offerors that award was made |
| <input type="checkbox"/> | <input type="checkbox"/> | Waiver or "No Action Taken" from Procurement Office |
| <input type="checkbox"/> | <input type="checkbox"/> | If IFB and not awarded to lowest responsive, responsible bidder; written explanation |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: _____ |

DISCLOSURES*

YES N/A

- | | | |
|---|--------------------------|--|
| Contractor Disclosures & Conflicts of Interest | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Disclosures & Conflicts of Interest Form(s) (winning bidder(s)/offeror(s)) |
| Contractor –Conflicts of Interest | | |
| <input type="checkbox"/> | <input type="checkbox"/> | Purchasing Office Letter or e-mail to designated individual regarding potential conflict |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Conflict of Interest Form signed by all parties |
| <input type="checkbox"/> | <input type="checkbox"/> | Letter from Procurement Office regarding the potential conflict |
| Subcontractor Disclosures | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Disclosures & Conflicts of Interest form of Subcontractor(s) |
| Subcontractor –Conflicts of Interest | | |
| <input type="checkbox"/> | <input type="checkbox"/> | Purchasing Officer Letter or email to designated individual regarding potential conflict |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Conflict of Interest form signed by all parties |
| <input type="checkbox"/> | <input type="checkbox"/> | Letter from Legal Office regarding the potential conflict |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: _____ |

CONTRACT*

YES N/A

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Copy of Executed Contract |
| <input type="checkbox"/> | <input type="checkbox"/> | Copy of all documentation presented to the Committees |
| <input type="checkbox"/> | <input type="checkbox"/> | Finalized Council Committee Minutes |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: _____ |

MISCELLANEOUS FILE*

YES N/A

- | | | |
|-------------------------------------|--------------------------|---------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Local Preference Form |
| <input type="checkbox"/> | <input type="checkbox"/> | New Mexico Residence Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Veterans Exemption |

*

Other: _____

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

PROTEST (If applicable)*

YES N/A

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Documentation from protester filed with the Purchasing Office |
| <input type="checkbox"/> | <input type="checkbox"/> | Letter from Department to Purchasing Office Providing response to protest |
| <input type="checkbox"/> | <input type="checkbox"/> | Letter from Purchasing Officer to protester and Department on final outcome |
| <input type="checkbox"/> | <input type="checkbox"/> | Other: _____ |

Create a separate file folder which may contain any documents with trade secrets or other competitively sensitive, confidential or proprietary information.

YES N/A

- | | | |
|-------------------------------------|--------------------------|------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Original bid(s) with no redactions |
|-------------------------------------|--------------------------|------------------------------------|

Bill Huey, Engineer

Department Rep Printed Name and Title


Department Rep Signature attesting that all information included

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN OWNER
AND CONTRACTOR

This Agreement is entered into this _____ day of _____, 2015, by and between the CITY OF SANTA FE, herein known as the Owner, and Sub Surface Construction Inc., herein known as the Contractor.

For the following:

PROJECT: Water Main Replacements
PROJECT NO.: CIP # 3046

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a Construction Contract for the project; and

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

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for the replacement and upgrade water on: Douglas Street south of Arroyo Tenorio, Miller Street between Arroyo Tenorio and Camino de Las Animas, and Camino Escondido between E. Alameda Street and Canyon Road. Enhanced fire protection will be installed on Camino Escondido by installing one new fire hydrant. The work consists of, but is not limited to complete in place installation of new main line of approximately 500 feet of 4-inch, and 1200 feet of 6-inch Ductile Iron Pipe including water valves, restoration. All work on Miller Street and Douglas Street is under soil

on the shoulders and roadway. The work on Camino Escondido is under a variety of surfaces including soil, asphalt and concrete. All work will be in accordance with the drawings, specifications and other contract documents.

The work consists of furnishing all equipment, labor and materials as required by the City of Santa Fe, New Mexico.

Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of the work.

The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.

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

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The work to be performed under this Contract may commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved no later than (90) ninety calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

ARTICLE 4

CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of two hundred thousand six hundred sixty nine dollars and 80/100's (\$200,669.80). The Contractor agrees that if it ever receives a partial or total refund of Gross Receipts Taxes (GRT) it will transmit the refund to the City immediately. The GRT amount of sixteen thousand six hundred eighty dollars and 68/100s (\$16,680.68) is [\$8.3125]% of Base Bid and is being paid by the Owner to the Contractor so that the Contractor can pay the GRT to the New Mexico Taxation and Revenue Department (NMTRD). It is not compensation for services rendered. The Contractor agrees to timely remit this GRT to NMTRD.

The Contract Sum is determined as follows:

Base Bid	\$ 200,699.80
Gross Receipts Tax	\$ 16,680.68
TOTAL	\$ 217,350.48

ARTICLE 5
PROGRESS PAYMENTS

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

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and ninety five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to ninety eight percent (98%) of the Contract Sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time or any extension in the Contract thereof, the Contractor agrees to pay to the Owner the amount of One Thousand dollars (\$1,000) per consecutive calendar days of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the (90) ninety calendar day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract (See Article 4.10, Progress Schedules of Section 00700, General Conditions of the Contract).

ARTICLE 9
GENERAL AND SPECIAL PROVISIONS

- 9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.
- 9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.
- 9.4 An enumeration of the Contractor's Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the aggregate maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.
- 9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.
- 9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.
- 9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner.

- 9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.
- 9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
- 9.10 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.
- 9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.
- 9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.
- 9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
- 9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER

City of Santa Fe
Sangre De Cristo Water Division
P.O. Box 909
Santa Fe, New Mexico 87504-0909

CONTRACTOR

Sub Surface Construction, Inc.
27 A Paseo de River
Santa Fe. NM 87507

- 9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 9.17 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.
- 9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.
- 9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 9.20 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
- 9.21 Entire Agreement. This Agreement represents the entire Contract between the parties and except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior conditions, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.
- 9.24 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

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

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

ARTICLE 10
NEW MEXICO TORT CLAIMS ACT

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

This Agreement is entered into as of the day and year first written above.

ATTEST:

OWNER:

YOLANDA Y. VIGIL, CITY CLERK

JAVIER GONZALES, MAYOR

APPROVED AS TO FORM:

DATE

KELLEY BRENNAN, CITY ATTORNEY

CONTRACTOR:
Sub Surface Construction

APPROVED:

TITLE:

OSCAR RODRIGUEZ, DIRECTOR
FINANCE DEPARTMENT

DATE:

NM TAXATION AND REVENUE CRS
NO. 02-104256-000

CITY OF SANTA FE BUSINESS REG.
NO. 15-00046991

52350.572970



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 **FOR: ORIGINAL CONTRACT** or **CONTRACT AMENDMENT**

2 Name of Contractor Sub Surface Contracting Inc.

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$217,350.48

Termination Date: 90ntp

Approved by Council Date: Pending

or by City Manager Date: _____

Contract is for: Water Main Replacement

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 217,350



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# _____ Date: _____
RFQ [X] 15/32/B _____ Date: July 21, 2015
Sole Source [] _____ Date: _____
Other _____

6 Procurement History: _____
example: (First year of 4 year contract)

7 Funding Source: water cip _____ BU/Line Item: 52350.57297

8 Any out-of-the ordinary or unusual issues or concerns:
none
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez
Phone # 955-4271

10 Certificate of Insurance attached. (If original Contract) []

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review
and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

[Empty box for comments]

Power of Attorney

WESTCHESTER FIRE INSURANCE COMPANY

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the Commonwealth of Pennsylvania pursuant to the following Resolution, adopted by the Board of Directors of the said Company on December 11, 2006, to wit:

*RESOLVED: that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing any other officer of the Company the authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED: that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

Does hereby nominate, constitute and appoint Bartley Hoyt Kinney, III, Carl Samuel Conlee, III, Dean E Vigil, Linda D Dooley, Robert B Lilley, Robert L Brooks, Stuart E Kuyper, all of the City of ALBUQUERQUE, New Mexico, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding One million Two hundred Fifty thousand dollars & zero cents (\$1,250,000.00) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said Stephen M. Hancy, Vice-President, has hereunto subscribed his name and affixed the Corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY this 23 day of September 2014.

WESTCHESTER FIRE INSURANCE COMPANY

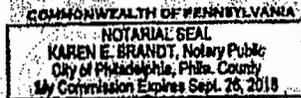


Stephen M. Hancy
Stephen M. Hancy, Vice President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

ss.
On this 23 day of September, AD. 2014 before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Hancy, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.



Karen E. Brandt
Notary Public

I, the undersigned Assistant Secretary of the WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 21st day of July 2015



William L. Kelly
William L. Kelly, Assistant Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER September 23, 2016.

