

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 02/12/14
ITEM FROM FINANCE COMMITTEE MEETING OF 02/03/14

ISSUE:

8. Request for Approval of Amendment No. 1 to Construction Agreement – City-Wide Water Utility Construction and Repair Projects; Sub Surface Contracting, Inc. (Bill Huey)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of amendment no. 1 to construction agreement for city-wide water utility construction and repair projects with Sub Surface Contracting, Inc. in the amount of \$380,324.65 plus gross receipts tax. Budget is available in line extensions mains and services fund.

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR BUSHEE	X		
COUNCILOR CALVERT	Excused		
COUNCILOR DIMAS	X		
COUNCILOR IVES	X		
CHAIRPERSON DOMINGUEZ			

3-19-12/FCIssue

ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 1/15/14

ISSUE NO. 16

Request for approval of Amendment No. 1 to the contract with Sub Surface Contracting, Inc. for replacement of malfunctioning air valves on the Buckman Pipeline for the total amount of \$380,324.65 exclusive of NMGRT. (Bill Huey)

Public Utilities Committee – 1/15/14
 Finance Committee 2/3/14
 City Council – 2/12/14

PUBLIC UTILITES COMMITTEE ACTION: Approved.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR CALVERT, CHAIR	X		
COUNCILOR TRUJILLO	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR DIMAS	Absent		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

DATE: January 7, 2014

TO: PUC Committee/ Finance

VIA: Nick A. Schiavo, Interim Public Utilities Department and Water Division Director ^{NSA}

FROM: Alex A Puglisi, SOS Section Manager
Bill Huey, Water Division Engineer

ITEM AND ISSUE:

Request approval of Amendment #1 with Sub Surface Contracting, Inc. to increase the amount not to exceed compensation by four-hundred eleven thousand four hundred sixty three dollars and seventy four cents dollars (\$411,463.74) for the air valves on the Buckman Pipeline.

BACKGROUND AND SUMMARY:

On July 31, 2013, Bid # '13/37/B was awarded by City Council to Sub Surface Contracting, Inc. (Sub Surface). The City Wide Water Utility Construction Contract is a requirements contract with the Water Division issuing work orders as needed for work such as water line replacements and emergency repairs.

The Water Division has recently become aware of the need to replace the tapping saddles on eighty-two (82) of the ninety-four (94) air relief valves (ARV) on the Buckman Pipeline. One of the ARVs failed last summer, and after a thorough inspection, it has been determined that all similarly installed air valves need to be replaced. The Water Division is requesting an increase in the contract to replace the ARVs in the most critical stretch of the pipeline this winter. The cost to do this work is estimated at \$411,463.74.

Funds for this work are available under Line Extensions Mains and Services business unit/fund number 52305.572970 in the approved FY 13/14 Budget in the amount of \$411,463.74 plus NMGRT.

ACTION REQUESTED:

Staff requests review and approval of:

- Amendment No. 1 with Sub Surface in the amount of \$411,463.74 plus NMGRT.
- Forwarding and recommendation of approval amendment # 1 to the Finance Committee on January 21st for their consideration and approval and to the Governing Body on January 29th for their final consideration and approval.

**CITY OF SANTA FE
AMENDMENT No. 1 TO
THE AGREEMENT BETWEEN OWNER AND CONTRACTOR**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE AGREEMENT, dated July 31, 2013 (the "Agreement"), between the City of Santa Fe (the "Owner") and Sub Surface Contracting, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide Construction Services for the City Wide Utility Construction and Repair Projects CIP #3044 for the City of Santa Fe.

B. Pursuant to Article 9.21 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

A. Article 4, paragraph 4.1 of the Agreement is amended to increase the amount of compensation by a total of four hundred eleven thousand four hundred sixty three dollars and 74/100's (\$411,463.74) and the gross receipts tax (GRT) amount by a total of thirty three thousand six hundred eighty eight dollars and 60/100's (\$33,688.60), so that Article 4 paragraph 4.1 reads in its entirety as follows:

4.1 The Owner shall pay the Contractor in current funds for the performance of each Work Order at the fixed unit prices set forth in Exhibit I, subject to additions and deductions by Change Order as provided in the Contract Documents, up to the Contract

Sum of eight hundred eleven thousand four hundred sixty three dollars and 74/100's (\$811,463.74). The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the Owner immediately. The GRT amount of sixty six thousand four hundred thirty eight dollars and 60/100's (\$66,438.60) is 8.1875% 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.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No.1 to the City of Santa Fe Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:
SUB SURFACE CONTRACTING

DAVID COSS, MAYOR

Name & Title

Date: _____

Date: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



KELLEY A. BRENNAN, INTERIM CITY ATTORNEY 1/8/14

APPROVED:

MARCOS A. TAPIA, FINANCE DIRECTOR

52305.572970
Business Unit/Line Item

**CITY OF SANTA FE - SANGRE DE CRISTO WATER DIVISION
13/14 CITY-WIDE WATER UTILITY CONSTRUCTION & REPAIR CONTRACT, BID 13/37/B
CONSTRUCTION ESTIMATE**

Project: Buckman ARV Connection 1 per Valve - Tapping Sleeve per 33 ARVs
Date: 01/07/2014

Drawing Number: N/A
City-Wide WO#: 01 E01

CONSTRUCTION ITEMS

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED QUANTITY	AMOUNT
9950	Materials Invoice - piping and misc	LS	\$3,185.00	33	\$ 105,105.00
9950	Materials Mark-Up Over Invoice	%	\$ 0.15	\$ 105,105.00	\$ 15,765.75
9950	Materials Invoice - Added Manhole Barrels	LS	\$1,800.00	1	\$ 1,800.00
9950	Materials Mark-Up Over Invoice	%	\$ 0.15	\$ 1,800.00	\$ 270.00
9950	20-inch Valve Inspection/Replacement	LS	\$64,782.80	1	\$ 64,782.80
9100	Backhoe	HR	\$ 43.00	264	\$ 11,352.00
9300	Dump Truck	HR	\$ 55.00	50	\$ 2,750.00
9200	Compressor	HR	\$ 22.00	50	\$ 1,100.00
9500	Laborer	HR	\$ 41.00	1320	\$ 54,120.00
9600	Pipe Fitter	HR	\$ 43.00	660	\$ 28,380.00
9700	Equipment Operator	HR	\$ 58.00	169	\$ 9,802.00
9800	Foreman	HR	\$ 75.00	660	\$ 49,500.00
9900	Transport	HR	\$ 110.00	3	\$ 330.00
9900	Rental Items Mark-Up Over Invoice	%	\$ 0.15	\$ 330.00	\$ 49.50
9900	Pick-up with Tools	HR	\$ 30.00	396	\$ 11,880.00
9900	Rental Items Mark-Up Over Invoice	%	\$ 0.15	\$ 11,880.00	\$ 1,782.00
9900	Jumping Jack Tamper	HR	\$ 54.00	264	\$ 14,256.00
9900	Rental Items Mark-Up Over Invoice	%	\$ 0.15	\$ 14,256.00	\$ 2,138.40
9900	Pump	HR	\$ 17.00	264	\$ 4,488.00
9900	Rental Items Mark-Up Over Invoice	%	\$ 0.15	\$ 4,488.00	\$ 673.20

Total of Bid Items		\$380,324.65
NM GRT	8.1875%	\$31,139.08
Est.Construction Cost		\$411,463.74

Comments: Sub Surface Contracting, Inc. estimate to replace connections on thirty-three (33) ARVs between Booster Number 3 and the Ten Million Gallon Tank on the Buckman Pipeline. This work will be paid for under the emergency response section of the Citywide Water Utility Construction and Repair Contract.

Prepared By: _____
Bill Huey

Date: _____

Base per ARV For the 33 ARV between Booster #3 and the 10 MG Tank

Materials:	\$/unit	Units	Cost
20x6 S. Steel Tapping Sleeve	\$2,655.00	1	\$2,655.00
Misc. Pipe & Fittings	\$350.00	1	\$350.00
Freight	\$180.00	1	\$180.00
			\$0.00
Total			\$3,185.00

Added Manhole Barrels:	\$/unit	Units	Cost
12" tall Barrel	\$78.00	10	\$780.00
24" tall Barrel	\$156.00	1	\$156.00
Steps	\$10.00	23	\$230.00
Roll Ramneck	\$9.00	26	\$234.00
Freight	\$400.00	1	\$400.00
Total			\$1,800.00

20-inch Valve Inspection/Replacement	\$/unit	Units	Cost
Costs on Separate Estimate	\$16,195.70	4	\$64,782.80

**CITY OF SANTA FE - SANGRE DE CRISTO WATER DIVISION
13/14 CITY-WIDE WATER UTILITY CONSTRUCTION & REPAIR CONTRACT, BID 13137/B
CONSTRUCTION ESTIMATE**

Project: Buckman Pipeline Inspect-Replace 20-inch Valve
Drawing Number: N/A
Date: 01/07/2014
City-Wide WO#: 01 ED1

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED QUANTITY	AMOUNT
9950	Materials Invoice - piping and misc	LS	\$6,500.00	1	\$ 6,500.00
9950	Materials Mark-Up Over Invoice	%	0.15	\$ 6,500.00	\$ 975.00
9100	Backhoe	HR	\$ 43.00	8	\$ 344.00
9300	Dump Truck	HR	\$ 55.00	8	\$ 440.00
9200	Compressor	HR	\$ 22.00	8	\$ 176.00
9500	Laborer	HR	\$ 41.00	44	\$ 1,804.00
9600	Pipe Fitter	HR	\$ 43.00	22	\$ 946.00
9700	Equipment Operator	HR	\$ 58.00	33	\$ 1,914.00
9800	Foreman	HR	\$ 75.00	22	\$ 1,650.00
9800	Transport	HR	\$ 110.00	3	\$ 330.00
9900	Rental Items Mark-Up Over Invoice	%	0.15	\$ 330.00	\$ 49.50
9900	Pick-up with Tools	HR	\$ 30.00	12	\$ 360.00
9900	Rental Items Mark-Up Over Invoice	%	0.15	\$ 360.00	\$ 54.00
9900	Jumping Jack Tamper	HR	\$ 54.00	8	\$ 432.00
9900	Rental Items Mark-Up Over Invoice	%	0.15	\$ 432.00	\$ 64.80
9900	Pump	HR	\$ 17.00	8	\$ 136.00
9900	Rental Items Mark-Up Over Invoice	%	0.15	\$ 136.00	\$ 20.40
Total of Bid Items					\$16,195.70
NM GRT					\$1,326.02
Est.Construction Cost					\$17,521.73

Comments: Sub Surface Contracting, Inc. estimate to inspect and/or replace one 20-inch butterfly valve on the Buckman Pipeline. This work will be paid for under the emergency response section of the Citywide Water Utility Construction and Repair Contract.

Materials:	Unit	Cost
20" MJ Butterfly Valve	1	\$3,350.00
Misc. Pipe & Fittings to Install	1	\$2,900.00
Freight	1	\$250.00
Total		\$6,500.00

Prepared By: Bill Huey Date: _____



**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: \$400,000.00

Termination Date: June 30, 2014

Approved by Council Date: July 31, 2013

or by City Manager Date: _____

Contract is for: City Wide Utility Repair

Amendment # 1 to the Original Contract# 130768

Increase/(Decrease) Amount \$ 411463.74

Extend Termination Date to: NA

Approved by Council Date: Pending

or by City Manager Date: _____

Amendment is for: Increase compensation Air Valves

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

Amount \$ 400,000.00 of original Contract# 130768 Termination Date: 06/30/2013

Reason: _____

Amount \$ 411,463.74 amendment # 1 Termination Date: na

Reason: air valve increase comp

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: Increase term

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 811,464



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

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

RFP# _____ Date: _____

RFQ [checked] 1337b _____ Date: June 17, 2013

Sole Source [unchecked] _____ Date: _____

Other _____

6 Procurement History: Year 1 of 4
example: (First year of 4 year contract)

7 Funding Source: water cip BU/Line Item: 52305

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) [unchecked]

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:

[Large empty rectangular box for comments]

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AGREEMENT FORMS

(SECTION 00500)

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

This Agreement is entered into this 31st day of July, 2013, by and between the CITY OF SANTA FE, herein known as the Owner, and Sub Surface Contracting herein known as the Contractor.

For the following:

PROJECT: FY13/14 City-Wide Water Utility Construction & Repair Contract

PROJECT NO.: CIP # 3044

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 July 31, 2013.

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 FY 13/14 City-Wide Water Utility Construction & Repair Contract

The work designated as FY 13/14 City-Wide Water Utility Construction & Repair Contract consists of, but is not limited to construction and repair of water mains, valves, hydrants, metered water service lines and settings, pressure reducing valves, vaults, and other incidental work such as pavement removal and replacement, traffic control all as required to extend, replace or repair water distribution, water storage, and water supply infrastructure. 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 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 Three Hundred Twenty-Eight (328) calendar days after the date of written Notice to Proceed, and Final Completion shall be reached no later than Three Hundred Twenty-Eight (328) calendar days after the date of written Notice to proceed, except as hereafter extended by valid written Change Order by the Owner. The Term may be extended for three (3) additional twelve (12) month periods by the written agreement of the Parties amending this Contract.

ARTICLE 4
CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the performance of each Work Order at the fixed unit prices set forth in Exhibit I, subject to additions and deductions by Change Order as provided in the Contract Documents, up to the Contract Sum of Four Hundred Thousand (\$400,000.00) dollars. The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the City immediately. The GRT amount of [\$32,750.00] is 8.1875% 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.

4.2 Contractor shall submit to the City a detailed statement of the quantity of Work completed under all Work Orders during the preceding calendar month, together with an invoice based on such statements. In the event the City shall question any items included in said statement and invoice, the items in question shall be

deducted and the remainder of the invoice amount paid in the manner specified and Contractor promptly notified of the amount withheld. When the accuracy of the withheld items is established or adjustment thereof has been agreed upon between the Parties. City shall promptly pay, in the specified manner, the invoice amount for such items agreed upon.

4.3 The Contract Sum is determined as follows:

Base Bid	\$ 400,000.00
Gross Receipts Tax	<u>32,750.00</u>
TOTAL	\$ <u>432,750.00</u>

ARTICLE 5
PROGRESS PAYMENTS

Based upon Applications 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 Five Hundred dollars (\$500) 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 if approved on a fully executed Work Order, 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 - Not Applicable
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 Three Hundred Twenty-Eight (328) 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 Contracting
27 A Paseo De River
Santa Fe, NM 87507
New Mexico License # 3072

- 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:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK
Comtg. 8/31-13

OWNER:

David Coss
DAVID COSS, MAYOR
8-2-13
DATE

APPROVED AS TO FORM:

Judith Zamora
GENO ZAMORA, CITY ATTORNEY
8/24/13

CONTRACTOR:

Sub Surface Contracting
BY: James Koladin
TITLE: J-R
DATE: 8-8-13

APPROVED:

Marcos A. Tapia
MARCOS A. TAPIA, DIRECTOR
FINANCE DEPARTMENT
8/1/13

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

CITY OF SANTA FE BUSINESS REG.
NO. Pending