

**ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 01/28/15
ITEM FROM FINANCE COMMITTEE MEETING OF 01/20/15**

ISSUE:

8. Request for Approval of Amendment No. 1 to Agreement – Compressed Natural Gas (CNG) Facility Upgrade and Expansion for Transit Division; Huitt-Zollars, Inc. (Jon Bulthuis)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of amendment no. 1 to agreement for Compressed Natural Gas (CNG) Facility upgrade and expansion for transit division with Huitt-Zollars, Inc. in the amount of \$22,256 inclusive of gross receipts tax for a total amount of \$57,780. Budget is available in transit fund.

FUNDING SOURCE: 52401.510340

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

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

3-17-14

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, JANUARY 12, 2015**

ITEM 7

REQUEST FOR APPROVAL FOR AMENDMENT NUMBER ONE (1) TO THE AGREEMENT BETWEEN CITY OF SANTA FE AND HUITT-ZOLLARS, INC. FOR COMPRESSED NATURAL GAS (CNG) FACILITY – UPGRADE AND EXPANSION TO ADD REIMBURSABLE EXPENSES FOR TOPOGRAPHIC, SUBSURFACE UTILITY AND BOUNDARY SURVEYS (**JON BULTHUIS**)

PUBLIC WORKS COMMITTEE ACTION: APPROVED ON CONSENT

FUNDING SOURCE: 52401.510340

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	EXCUSED		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

DATE: December 29, 2014

TO: Public Works Committee

THRU: Isaac Pino, Public Works Director
Jon Bulthuis, Transportation Department Director ~~JK~~

FROM: Ken Smithson, Director of Operations and Maintenance *KS*

SUBJECT: Request for Approval of Amendment No. 1 to the Agreement Between City of Santa Fe and Huitt-Zollars, Inc. for Compressed Natural Gas (CNG) Facility – Upgrade and Expansion, to Add Reimbursable Expenses for Topographic, Subsurface Utility and Boundary Surveys

ITEM

The AIA Document B101 – 2007 *Standard Form of Agreement Between Owner and Architect* was executed on September 10, 2014 (Item #14-0901) between the City of Santa Fe and Huitt-Zollars, Inc. for the Compressed Natural Gas (CNG) Facility – Upgrade and Expansion project at 2931 Rufina St.

There was a total of \$6,400 plus tax allowed for surveys in the original purchase order to Huitt-Zollars. However, the project has now identified the need for a topographic survey, subsurface utility engineer support survey and boundary survey – for both Transit Division property and the adjacent Environmental Services Division property – at an additional \$20,800 plus tax. A review of all available City of Santa Fe records did not produce any such surveys for the two properties involved in this CNG project.

The topographic survey will collect a sufficient amount of data points to provide the mapping required for the project design. The subsurface survey will identify and mark the location of underground features within the project limits. The boundary survey will locate property corners so as to place the property lines in the topographic CAD file.

ACTION REQUESTED

Recommend to the Finance Committee to approve Amendment No. 1 to the Agreement between City of Santa Fe and Huitt-Zollars, Inc. for Compressed Natural Gas (CNG) Facility – Upgrade and Expansion, to add reimbursable expenses for topographic, subsurface utility and boundary surveys.

Amendment No. 1
December 29, 2014
Page 2

Funds are available in BU/LI 52401.510340 for this procurement.

ATTACHMENTS

AIA Document B101 – 2007, Standard Form of Agreement Between Owner and Architect
City of Santa Fe Amendment No. 1 to Agreement Between Owner and Architect
Summary of Contracts, Agreements and Amendments

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

AMENDMENT No. 1 (the "Amendment") to the STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT, dated September 10, 2014 (the "Agreement"), between the City of Santa Fe (the "City") and Huitt-Zollars, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor, whichever occurs last.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide design services for program, design development and construction documents phases, for Compressed Natural Gas (CNG) Facility – Upgrade and Expansion, to the City.

B. Pursuant to Article 10.19 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. SCOPE OF WORK.

Article 3.3, of the Agreement is amended to add the following paragraph:

3.3.4 Topographic survey, subsurface utility engineer support survey and boundary survey, and as described in Exhibit 4 attached hereto and incorporated herein.

2. COMPENSATION.

A. Article 11, section 11.8.2 of the Agreement is amended to increase the amount of compensation for reimbursable expenses by a total of twenty two thousand two hundred fifty six dollars (\$22,256), tax included, so that Article 11, section 11.8.2, reads in its entirety as follows:

For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and Architect's consultants. The allowed amount shall be fifty four thousand dollars (\$54,000), plus tax in the amount of three thousand seven hundred eighty dollars (\$3,780), for a total amount of fifty seven thousand seven hundred eighty dollars (\$57,780), plus 0% of the expenses incurred.

3. SCOPE OF THE AGREEMENT

Article 13, section 13.2.3 "Other documents:" of the Agreement is hereby amended. A new Exhibit 4, "Topographic Survey for CNG Facility Upgrades for the City of Santa Fe" is attached.

4. 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 Standard Form of Agreement Between Owner and Architect as of the date signed by the City set forth below.

CITY OF SANTA FE:

CONTRACTOR:
HUITT-ZOLLARS, INC.

JAVIER M. GONZALES, MAYOR

JOHN JARRARD, VICE PRESIDENT

Date: _____

Date: _____

CRS No.: 02-279106-000
City of Santa Fe Business Registration No.:
14-00003145

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

MDM 1/7/15
KELLEY A. BRENNAN,
CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ,
FINANCE DIRECTOR

52401.510340
BUSINESS UNIT/LINE ITEM

HUITT-ZOLLARS, INC. • 6501 Americas Pkwy. NE • Suite 550 • Albuquerque, NM 07110-5372 • 505.883.8114 phone • 505.883.5022 fax • huitt-zollars.com

December 8, 2014

Mr. Ken Smithson
Director of Operations & Maintenance
City of Santa Fe – Transit Division
2931 Rufina Street
Santa Fe, NM 87507

RE: Topographic Survey for CNG Facility Upgrades for the City of Santa Fe.

Dear Ken,

Huitt-Zollars is pleased to provide the following fee proposal for design services for the above referenced project. Per our recent meeting and conversations, I have developed the following Scope of Services, and Fee based on our understanding of the project requirements.

SCOPE OF SERVICES

The survey will include the following information:

Topographic survey of the Santa Fe Transit property and adjacent property for the proposed Solid Waste Fueling Area as indicated on the attached aerial photograph. The survey will use New Mexico State Plane Coordinates, NAD83, Central Zone, modified to Ground and the vertical datum will be NAVD88. Basis for the coordinates will be a static GPS observation that will be submitted to the NGS for an OPUS solution.

The survey will include the following tasks

- Topographic survey: Our field crew will complete a topographic survey of the areas outlined on the attached. Each area will have a sufficient amount of data points surveyed to provide the mapping required for the project design.
- Subsurface Utility Engineer support survey: As part of our team we have a Professional SUE (Subsurface Utility Engineer) provider that will identify and mark the location of underground utility features within the project limits. Our survey crew will survey these utility marks.
- Boundary survey: Our survey crew using the existing survey plat and/or deed, to locate property corners. All found property corners will be surveyed; this will allow us to place the property lines in the topographic CAD file.

FEE

Huitt-Zollars' fee for the services enumerated above will a lump sum fee of \$27,200.00 (excluding NMGRT). Fee is based on following man-hours .

Fee is based on following man-hours.

Survey Manager	20 Hours
Survey Crew	80 Hours (2 man crew)
Utility Locating	80 Hours (2 man crew)
Drafting	40 Hours
Total	220 Hours

Note: The reimbursable amount available in our current agreement is \$6,400.00, therefore, an additional amount of \$20,800.00 will be added by amendment.

All services will be invoiced monthly. Please let me know if you have any questions or if you need any additional information. We look forward to working with you and are available to start immediately on this project.

Sincerely,
Huitt-Zollars, Inc.



John L. Jarrard, AIA
Vice President





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

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

RFP# '14/48/P Date: June 10, 2014

RFQ Date:

Sole Source Date:

Other

6 Procurement History: Amendment #1 to original contract
example: (First year of 4 year contract)

7 Funding Source: Transit Fund BU/Line Item: 52401.510340

8 Any out-of-the ordinary or unusual issues or concerns:
N/A
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Ken Smithson, Director of Operations & Maintenance

Phone # Ext. 2223

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:

Large empty rectangular box for comments.

ITEM # 14-0901

 **AIA** Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the tenth day of September in the year 2014

BETWEEN the Architect's client identified as the Owner:

City of Santa Fe
200 Lincoln Ave.
Santa Fe, NM 87501

and the Architect:

Huitt-Zollars, Inc.
6501 Americas Parkway NE
Suite 550
Albuquerque, NM 87110-8154

for the following Project:

Compressed Natural Gas (CNG) Facility - Upgrade and Expansion
2931 Rufina Street, Santa Fe, New Mexico 87507-2928

The design of the replacement of the fuel compressors, storage tank equipment and lines at the existing CNG fueling facility. The design work also includes (a) the addition of 18 new fueling bays in the Transit yard and 40 new fueling bays on the Environmental Services Division property north of the compression station, (b) evaluation of the fast-fill dispenser (for public access vehicle fueling) at the compression station for required equipment upgrades, and (c) replacement of the CNG distribution lines and the electrical lines supplying power to the fueling facility.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

init.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article
(Paragraphs deleted)

1.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

The construction commencement date is yet to be determined (no construction funding is available at this time); this original contract does not include bidding or construction phase services.

.2 Substantial Completion date:

not available; see comment above (1.2.1)

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

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perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

Each Occurrence \$1,000,000, damage to Rented Premises (Ea. Occurrence) \$1,000,000, Med Exp (Any one person) \$10,000, Personal & Adv Injury \$1,000,000, General Aggregate \$2,000,000, Products – Comp/Op Agg \$2,000,000, Emp Ben. \$1,000,000

.2 Automobile Liability

Combined single Limit (Ea accident) \$1,000,000

.3 Workers' Compensation

E.L. Each Accident \$1,000,000, E.L. disease – Ea. Employee \$1,000,000, E.L. Disease – Policy Limit \$1,000,000

.4 Professional Liability

Ea. Claim \$1,000,000, Aggregate \$2,000,000

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and in the Request For Proposals # 14/48/P, including any Addendums, and include the usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the completion of the Construction Documents phase, including all specifications and final cost estimate. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 PROGRAM PHASE SERVICES

§ 3.2.1 The Architect shall review the information furnished by the Owner, and shall obtain and analyze all of the additional information required to develop a detailed program for the upgrades and expansion of the CNG facility. The Architect shall include in their review the laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare an evaluation of the existing CNG facility, including the existing utilities and distribution CNG lines, the project site, and the other information they obtain, each in terms of the other, to ascertain and quantify the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a program illustrating the scale and relationship of the Project components.

§ 3.2.5 The Architect shall submit to the Owner an opinion of the Cost of the Work prepared in accordance with Section 6.3.

(Paragraphs deleted)

§ 3.2.6 The Architect shall submit the final Program to the Owner, and request the Owner's approval.

(Paragraph deleted)

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Program Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and

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Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.6 If it is in the best interest of the Owner, when construction funding becomes available, the following additional phases of work may be added to this agreement by amendment.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) distribution of the bidding documents (2) obtaining either competitive bids or negotiated proposals; (3) and participate in the pre-bid meeting, (4) confirming responsiveness of bids or proposals; (5) determining the successful bid or proposal, if any; and, (6) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

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§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the

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provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents. The Architect shall, prior to authorization of final payment to the Contractor, obtain from the Contractor the construction drawings marked up by the Contractor with all changes made to the design during construction. The Architect shall provide construction Record Drawings to the Owner which incorporate the marked up drawings from the Contractor and all design changes provided to the Contractor by the Architect. The Record Drawings will be provided as a paper plan set, as electronic AutoCAD drawings and pdf drawings.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5		
§ 4.1.6 Building Information Modeling (E202™-2008)		
§ 4.1.7		
§ 4.1.8 Landscape design		
§ 4.1.9		
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11		
§ 4.1.12 On-site Project Representation (B207™-2008)		

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§ 4.1.13	Conformed construction documents		
§ 4.1.14			
§ 4.1.15			
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™-2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™-2007)		
§ 4.1.22	Commissioning (B211™-2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™-2012)		
§ 4.1.25	Fast-track design services		
§ 4.1.26	Historic Preservation (B205™-2007)		
§ 4.1.27			

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

none

§ 4.3 Additional Services may only be provided after execution of this Agreement, without invalidating the Agreement, by written amendment signed by the City and the Architect. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- 2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- 3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- 4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- 5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- 6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- 7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- 8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- 9 Evaluation of the qualifications of bidders or persons providing proposals;
- 10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- 11 Assistance to the Initial Decision Maker, if other than the Architect.

(Paragraphs deleted)

§ 4.3.2 If the services covered by this Agreement have not been completed within eighteen (18) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall initially establish and periodically update the estimated construction cost for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the maximum allowable construction cost at any time after the programming phase is complete, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 Unless otherwise provided for in this Agreement, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 Unless otherwise provided for in this Agreement, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.8 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.9 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

(Paragraphs deleted)

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ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work will be based on the Architect's cost estimate at the end of the Design Development phase, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

(Paragraphs deleted)

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for this Project or any other City of Santa Fe project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation in accordance with the New Mexico Public Works Mediation Act. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 If the parties agree to mediate a dispute, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 The method of dispute resolution shall be in accordance with New Mexico Public Works Mediation Act 13-4C-1 through 13-4C-11, NMSA 1978.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses

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incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's

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confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, all subject to the requirements set forth in the New Mexico Inspection of Public Records Act, and City ordinances.

§10.9 INDEMNIFICATION

The Architect shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgements, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Architect's performance under this Agreement as well as the performance of Architect's employees, agents, representatives and sub-consultants.

§ 10.10 APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Architect. The City's decision as to whether sufficient appropriations are available shall be accepted by the Architect and shall be final.

§ 10.11 THIRD PARTY BENEFICIARIES

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 City and the Architect. 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.

§ 10.12 STATUS OF ARCHITECT; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUB-CONSULTANTS

A. The Architect and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Architect, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Architect shall be solely responsible for payment of wages, salaries and benefits to any and all employees or sub-consultants retained by Architect in the performance of the services under this Agreement.

C. The Architect shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

§ 10.13 CONFLICT OF INTEREST

The Architect 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 of services required under this Agreement. Architect further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

§ 10.14 ASSIGNMENT: SUBCONTRACTING

The Architect shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Architect shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

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§ 10.15 RELEASE

The Architect, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Architect agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Architect has express written authority to do so, and then only within the strict limits of that authority.

§ 10.16 INSURANCE

A. Architect shall also obtain and maintain Workers' compensation insurance, required by law, to provide coverage for Architect's employees throughout the term of this Agreement. Architect shall provide the City with evidence of its compliance with such requirement.

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

§ 10.17 RECORDS AND AUDIT

The Architect shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

§ 10.18 APPLICABLE LAW: CHOICE OF LAW: VENUE

Architect shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Architect agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

§ 10.19 AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

§ 10.20 NON-DISCRIMINATION

During the term of this Agreement, Architect shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Architect hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

§ 10.21 SEVERABILITY

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In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

10.22 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) five days after the same are deposited in the United States Postal Service mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the address indicated below for each party, or at such other address as may be designated by either party in a written notice to the other party.

OWNER: Facilities Division, Public Works Department
City of Santa Fe
PO Box 909
Santa Fe, New Mexico 87504-0909

ARCHITECT: Huitt Zollars, Inc.
6501 Americas Parkway NE
Suite 550
Albuquerque, NM 87110-8154

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

10.24 TERM

This Agreement shall be effective when signed by the City and shall terminate on September 10, 2018, unless terminated sooner pursuant to Article 9.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Paragraph deleted)

\$One hundred forty six thousand twenty dollars (\$146,020.00) plus tax in the amount of ten thousand two hundred twenty one dollars and forty cents (\$10,221.40) for a total amount of one hundred fifty six thousand two hundred forty one dollars and forty cents (\$156,241.40).

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

none

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

none

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect.:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows, tax included:

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Program Phase	\$39,060.35	percent (25	%)
Design Development Phase	\$39,060.35	percent (25	%)
Construction Documents Phase	\$78,120.70	percent (50	%)
Bidding or Negotiation Phase	\$0.0	percent (0	%)
Construction Phase	\$0.0	percent (0	%)
Total Basic Compensation	\$156,241.40	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

not applicable

(Table deleted)

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Surveying and utility locating. (Documentation of utility locating by New Mexico One Call is included in basic services.)
- .2 Geotechnical Report
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Environmental assessment
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on reimbursable expenses;

(Paragraphs deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants. The allowed amount shall be thirty three thousand two hundred dollars (\$33,200.00), plus tax in the amount of two thousand three hundred twenty four dollars (\$2,324.00) for a total amount of thirty five thousand five hundred twenty four dollars (\$35,524.00), plus 0% of the expenses incurred..

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Architect under this Agreement shall become the Owner's property, and the Architect shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including Reimbursable Expenses authorized by Owner which are then due.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within twenty one (21) days of undisputed request for payment.

§ 11.10.2

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(Paragraphs deleted)

The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

(Paragraph deleted)

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

not applicable

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

(Paragraph deleted)

- .3 Other documents:
 - Exhibit 1 Request For Proposals '14/48/P
 - Exhibit 2 Project Schedule
 - Exhibit 3 Certificates of Liability Insurance

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User Notes:

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below:

CITY OF SANTA FE:

JAVIER M. GONZALES, MAYOR

DATE: 10-6-14

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK
cmty 09/10/14

ARCHITECT:
HUITT-ZOLLARS, INC.

BY:
JOHN JARRARD, VICE PRESIDENT

NM Taxation and Revenue CRS No.:
02-279106-000_
City of Santa Fe Business Registration No.:
14-00003145

APPROVED AS TO FORM:

KELLEY A. BRENNAN,
CITY ATTORNEY

APPROVED:

TERESITA GARCIA, ASSISTANT FINANCE DIRECTOR

52251.572960 Business Unit / Line Item
(Table deleted)

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