

**ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 05/28/14
ITEM FROM FINANCE COMMITTEE MEETING OF 05/19/14**

ISSUE:

11. Request for Approval of **Amendment No. 2** to Professional Services Agreement – Repair and Maintenance Services for HVAC Units at Santa Fe Community Convention Center; Yearout Service, LLC. (Randy Randall)

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

Requested approval of amendment no. 2 to professional services agreement for repair and maintenance services for HVAC units at Santa Fe Community Convention Center with Yearout Service, LLC in the amount of \$85,322.33 inclusive of gross receipts tax for a total not to exceed \$249,459.10 inclusive of gross receipts tax. Budget is available in convention center fund.

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

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

3-17/14/FCMissue



Memo

Date: May 8, 2014

To: Finance Council

Via: Marcos Tapia, Finance Director

From: Randy Randall, CVB Director

A handwritten signature in black ink, appearing to read "Randy Randall".

Re: Amendment No. 2 to the Professional Services Agreement with Yearout Service, LLC

ITEM & ISSUE:

Request for approval of the Amendment #2 to the Professional Services Agreement with Yearout Service, LLC

BACKGROUND AND SUMMARY:

Yearout Service LLC, provides Repair and Preventative Maintenance for the HVAC units for the Santa Fe Community Convention Center. There will be a minimum of 4 site visits per year to perform maintenance and review services. The compensation for this agreement is \$85,322.33. This amount is based on actual costs for FY 13, and FY 14.

REQUESTED ACTION:

Approval of the Amendment #2 to the Professional Services Agreement with Yearout Service, LLC. Funds will be taken from 52102.520400.

**CITY OF SANTA FE
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT**

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated September 27, 2012 (the "Agreement"), between the City of Santa Fe (the "City") and Yearout Service, LLC (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 HVAC Preventative Maintenance for the Santa Fe Community Convention Center.
- B. Pursuant to Article 18 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

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation so that Article 3, paragraph A reads in its entirety as follows:

- A. The City shall increase the Agreement in the amount of eighty five thousand three hundred and twenty two dollars and thirty three cents (\$85,322.33) inclusive of applicable gross receipts taxes. For a total sum not to exceed two hundred forty-nine thousand four hundred fifty-nine dollars and ten cents (\$249,459.10), inclusive of applicable gross receipts taxes.

2. TERM.

Article 5, of the Agreement is amended so that Article 5, paragraph A reads in its entirety as follows:

A. This Agreement shall be effective when signed by the City and terminate on June 30, 2015, unless sooner pursuant to Article 6 below. Contractor is granted, upon a satisfactory performance, an option to renew this Agreement for an additional one (1) year not to exceed four (4) years. Should either party wish to exercise this renewal option, written notice shall be given to the other party ninety (90) days before expiration of this Agreement. Negotiation shall take place and conclude before termination of this Agreement.

3. 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. 2 to the City of Santa Fe Professional Services Agreement as of the date signed by the City set forth below.

CITY OF SANTA FE

CONTRACTOR:
YEAROUT SERVICE, LLC.

JAVIER M. GONZALES
MAYOR

SAL TORTORICI

Date: _____

Date: _____

CRS# _____

City of Santa Fe Business Registration
Number: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

Kelley A. Brennan for

KELLEY A. BRENNAN,
INTERIM CITY ATTORNEY 5/8/14

APPROVED:

MARCOS A. TAPIA,
FINANCE DIRECTOR

52102.520400
BUSINESS UNIT/LINE ITEM



**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 Yearout Service, LLC

3 Complete information requested Plus GRT

Original Contract Amount: \$70,430.00 Inclusive of GRT

Termination Date: June 30, 2013

Approved by Council Date: 9/27/12

or by City Manager Date: _____

Contract is for: _____

Amendment # 2 to the Original Contract# 12-0862

Increase/(Decrease) Amount \$ 13-0524 85,322.33

Extend Termination Date to: 6/30/15

Approved by Council Date: 7/1/13

or by City Manager Date: _____

Amendment is for: Increase Amount, Extend Term.

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

Amount \$ \$93,706.77 of original Contract# 12-0862 Termination Date: 6/30/14
Reason: Amendment #1 - 13-0524
Extend for FY14, increase Amount.

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



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

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

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other _____

6 Procurement History: 3rd year of 4 year contract
example: (First year of 4 year contract)

7 Funding Source: 52102.520400 BU/Line Item: Rep Maint Mchnt Equip

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

9 Staff Contact who completed this form: Antonette Alvarez
Phone # X6210

10 Certificate of Insurance attached. (if original Contract)

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

To be recorded by City Clerk:

Contract # _____

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

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

Comments:

[Empty box for comments]

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated September 27, 2012 (the "Agreement"), between the City of Santa Fe (the "City") and Yearout Service, LLC (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 HVAC Preventative Maintenance and Service for the Santa Fe Community Convention Center.

B. Pursuant to Article 18 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.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation so that Article 3, paragraph A reads in its entirety as follows:

A. The City shall increase the Agreement in the amount of by a total of ninety three thousand seven hundred six dollars and seventy seven cents (\$93,706.77) inclusive of applicable gross receipts taxes. Payment shall be made for services actually rendered at a rate of seven thousand eight hundred eight dollars and ninety cents (\$7,808.90) per month with the total sum not to exceed one hundred sixty four thousand one hundred thirty six dollars and seventy seven cents (\$164,136.77).

2. TERM.

Article 5 of the Agreement is amended to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

This Agreement shall be effective when signed by the City and terminate on June 30, 2014, unless sooner pursuant to Article 6. There is an option for an annual renewal for an additional two years, not to exceed (4) years. Should either party wish to exercise this renewal option, written notice shall be given to the other party (90) ninety days before expiration of this Agreement. Negotiation shall take place and conclude before termination of this Agreement.

3. AGREEMENT IN FULL FORCE.

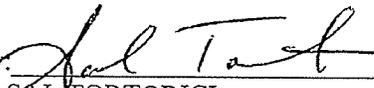
Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

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

CITY OF SANTA FE:

CONTRACTOR:
YEAROUT SERVICE, LLC

By: 
DAVID COSS, MAYOR

By: 
SAL TORTORICI

Date: 7-1-13

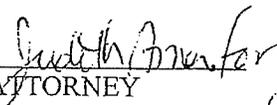
Date: 7/15/13

ATTEST:

CRS# 31-40758007
City of Santa Fe Business Registration
#13-103927


YOLANDA Y. VIGIL, CITY CLERK
cc 6/26/13

APPROVED AS TO FORM:


GENO ZAMORA, CITY ATTORNEY

APPROVED:


MARCOS A. TAPIA, FINANCE DIRECTOR
6/28/13

Yearout/Amendment 1/52102.510300

429-2288
Steve



Yearout Service

MAINTENANCE AGREEMENT FOR BUILDING ENVIRONMENTAL SYSTEMS

Proposal Date	Proposal Number	Agreement No.
06/29/2012	48	49

BY AND BETWEEN:

Yearout Service
8501 Washington NE
Albuquerque, NM 87113

AND

Santa Fe Civic Center
201 West Marcy Street
Santa Fe, NM 87501

hereinafter CONTRACTOR

hereinafter CUSTOMER

SERVICES WILL BE PROVIDED AT THE FOLLOWING LOCATION(S):

Santa Fe Civic Center

Contractor will provide the services described in the maintenance program indicated below, which are attached hereto and made a part of this Agreement, in accordance with the terms and conditions set forth on the following maintenance program pages.

MAINTENANCE PROGRAM: **Guaranteed Professional Maintenance**
and associated Terms and Conditions

AGREEMENT coverage will commence on July 01, 2013 (date). The AGREEMENT price is \$93,706.77 per year, payable \$7,808.90 per Month in advance beginning on the effective date of July 01, 2013.

This AGREEMENT price will be \$7,808.90 per Month from July 01, 2013 (date) through June 30, 2014 (date).

IN WARRANTY ONLY: During the warranty, the AGREEMENT price will be _____ per _____. It is understood that the warranty expires on _____ (date).

SCHEDULES INCLUDED:

This proposal is the property of Contractor and is provided for Customer's use only. Contractor guarantees the price stated in this Agreement for thirty (30) days from proposal date above. This proposal will become a binding Agreement only after acceptance by Customer and approved by an officer of Contractor as evidenced by their signatures below. This Agreement sets forth all of the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise or condition on behalf of Contractor which is not expressed herein. This annual Agreement shall continue in effect from year to year unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date.

CONTRACTOR

CUSTOMER

Signature (Sales Representative) _____
Cameron Geer

Approved For Contractor _____
Signature

G.M. - SAL Torricci
Name & Title

7/15/13
Date

Signature (Authorized Representative) _____
David Coss

David Coss
Name (Print/Type)

Mayor
Title

7-2-13
Date



GUARANTEED PROFESSIONAL MAINTENANCE PROGRAM

Proposal Date	Proposal Number	Agreement No.
06/29/2012	48	49

Our **GUARANTEED PROFESSIONAL MAINTENANCE (GPM)** provides the Customer with an ongoing, comprehensive maintenance program. The GPM program will be initiated, scheduled, administered, monitored, and updated by the Contractor. The service activities will be directed and scheduled, on a regular basis, by our comprehensive equipment maintenance scheduling system based on manufacturers' recommendations, equipment location, application, type, run time, and Contractor's own experience. The Customer is informed of the program's progress and results on a continuing basis via a detailed Service Report, presented after each service call for Customer's review, approval signature and record.

CONTRACTOR WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE BUILDING ENVIRONMENTAL MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):

TEST AND INSPECT: Job labor, travel labor and travel and living expenses required to visually INSPECT and TEST equipment to determine its operating condition and efficiency. Typical activities include:
 -TESTING for excessive vibration; motor winding resistance; refrigerant charge; fan RPM; refrigerant oil (acid); water condition; flue gas analysis; safety controls, combustion and draft; crankcase heaters, control system(s), etc.
 -INSPECTING for worn, failed, or doubtful parts; mountings, drive couplings; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

PREVENTIVE MAINTENANCE: Job labor, travel labor and travel and living expenses required to clean, align, calibrate, tighten, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:
 -CLEANING coil surfaces; fan impellers and blades; electrical contacts; burner orifices; passages and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; chiller, condenser and boiler tubes.
 -ALIGNING belt drives; drive couplings; air fins.
 -CALIBRATING safety controls; temperature and pressure controls.
 -TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections.
 -ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; water chemical feed and feed rate; burner fuel/air ratios; gas pressure; set point of controls and limits; compressor cylinder unloaders; damper close-off; sump floats.
 -LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages.
 -PAINTING, for corrosion control, as directed by our scheduling system and on an as-needed basis.

REPAIR AND REPLACE: Job labor, travel labor, parts procurement labor (locating, ordering, expediting and transporting) and travel and living expenses required to REPAIR or REMOVE AND REPLACE broken, worn and/or doubtful components and/or parts.

TROUBLE CALLS: Job labor and travel labor, including overtime, plus travel and living expenses required for unscheduled work resulting from an abnormal condition.

COMPONENTS, PARTS AND SUPPLIES: The cost of COMPONENTS, PARTS AND SUPPLIES required to keep the equipment operating properly and efficiently.

GUARANTEED PROFESSIONAL MAINTENANCE PROGRAM TERMS AND CONDITIONS

1. Customer shall permit Contractor free and timely access to areas and equipment, and allow Contractor to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Contractor's normal working hours.
2. In case of any failure to perform its obligations under this Agreement, Contractor's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.
3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Contractor may either remove the unacceptable system(s) component(s) or part(s) from its scope of responsibility and adjust the annual Agreement price accordingly or cancel this Agreement.
4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.
5. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.
6. Customer will promptly pay Invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Contractor may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.
7. This Agreement applies only to the maintenance portions of the system(s). Repair or replacement of non-maintainable parts such as duct work, boiler shell and tubes, cabinets, boiler refractory material, heat exchangers, main power service and electrical wiring, piping, tube bundles, valve bodies, coils, structural supports, oil storage tanks, chimneys and similar items, as well as the cleaning of the interior of duct work and DDC controls and the replacement of refrigerant, refrigerant systems or refrigerant types due to system leaks or changes in laws/regulations, are excluded.
8. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials or labor will become an extra charge (fixed price amount to be negotiated or on a time-and-material basis at Contractor's rates then in effect) over the sum stated in this Agreement.
9. Contractor will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.
10. This Agreement does not include responsibility for the design of the system, obsolescence, safety test, removal and reinstallation of valve bodies and dampers, repair or replacement necessitated by freezing weather, electrical power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), negligence of others (including Customer), failure of Customer to properly operate the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of Contractor.
11. If a trouble call is made at Customer's request and inspection indicates a condition which is not covered under this Agreement, Contractor may charge Customer at the rate then in effect for such services.
12. Customer shall permit only Contractor's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Contractor's personnel perform such work, Contractor may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.
13. In the event Contractor must commence legal action in order to recover any amount payable under this Agreement, Customer shall pay Contractor all court costs and attorneys' fees incurred by Contractor.
14. Any legal action against the Contractor relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.
15. Contractor shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Contractor's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.
16. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Contractor, its agent and employees from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Contractor.
17. Customer shall make available to Contractor's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA's Hazard Communication Standard Regulations.
18. Contractor expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Contractor's work under this agreement.
19. Contractor's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Contractor's sole obligation will be to notify the Owner of their existence. Contractor shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.
20. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL CONTRACTOR BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

MEMO

Date: June 6, 2013
To: Finance Committee
Via: Marcos Tapia, Finance Director
From: James Luttjohann, Executive Director 
Subject: Professional Services Agreement – Amendment #1
Yearout Service, LLC

.....
Background and Summary:

Request for approval of Amendment #1 of the Professional Services Agreement with Yearout Service, LLC.

Yearout Service LLC. provides Repair and Preventative Maintenance for the HVAC units for the Santa Fe Community Convention Center. There will be a minimum of 4 site visits per year to perform maintenance and review services.

In FY 2012/2013 the convention center had this maintenance agreement with Yearout Service LLC in the amount of \$70,430.00 inclusive of gross receipts taxes which covered preventative maintenance, emergencies, repairs, parts labor and travel. After assessment of emergencies, repairs and labor from FY 2012/2013 it was concluded that the compensation be increased to better service the needs of the Santa Fe Community Convention Center.

We are requesting approval of this Professional Services contract with an option for an annual renewal for an additional two years. The compensation for this agreement is \$93,706.77 inclusive of GRT.

Requested Action:

Approval of the Professional Services Contract with Yearout Services, LLC. Funds will be taken from 52102.510300 (Professional Services).

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Yearout Service, LLC (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

A. The Contractor shall provide the following services for the City per the proposal attached as Exhibit "A" attached hereto and incorporated herein.:

(1) Test and Inspect equipment to determine its operating condition and efficiency.

(2) Preventative Maintenance: job labor and travel and living expenses required to clean, align, calibrate, tighten, adjust, lubricate and paint equipment.

(3) Trouble calls: job labor and travel labor, including overtime, plus travel and living expenses required for unscheduled work resulting from an abnormal condition.

(4) Components, parts and supplies: the cost of components, parts and supplies required to keep the equipment operating properly and efficiently.

(5) Repair and replace: job labor, travel labor, parts procurement labor (locating, ordering, expediting and transporting) and travel and living expenses required to repair, remove and replace broken, worn and/or doubtful components and/or parts.

(6) A minimum of four (4) site visits per year will be scheduled to perform maintenance and review services, Tracer Summit Software inspections included.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed seventy thousand four hundred and thirty dollars (\$70,430.00), inclusive of applicable gross receipts taxes. Payment shall be made for services actually rendered at a rate of five thousand eight hundred sixty nine dollars and seventeen cents (\$5,869.17) per month.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. 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 Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2013 unless sooner pursuant to Article 6 below. There is an option for an annual renewal for an additional three (3) years, not to exceed four (4) years. Should either party wish to exercise this renewal option, written notice shall be given to the other party (90) ninety days before expiration of this Agreement. Negotiations shall take place and conclude before termination of this agreement.

6. TERMINATION

A. This Agreement may be terminated by the City upon 30 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, therefore the City shall pay the Contractor for the reasonable value of

services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, 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. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor 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.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with

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

10. ASSIGNMENT; SUBCONTRACTING

The Contractor 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 Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, 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 Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to

property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

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

C. Contractor 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 Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

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

14. 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.

15. 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 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.

16. RECORDS AND AUDIT

The Contractor 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.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor 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 Contractor 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.

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor 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.

21. SEVERABILITY

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.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Santa Fe Civic Center
201 West Marcy
Santa Fe, NM 87501

Contractor:
Yearout Service, LLC
8501 Washington NE
Albuquerque, NM 87113

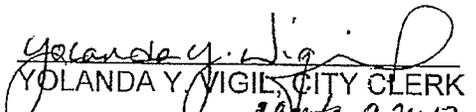
IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

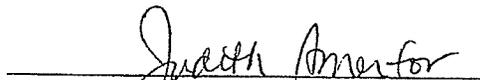

DAVID COSS, MAYOR

DATE: 9/27/12

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
9/24/12

APPROVED AS TO FORM:


GENO ZAMORA, CITY ATTORNEY
8/27/12

CONTRACTOR:
Yearout Services, LLC

By: 
SAL TORTORICI

CRS# 031-407 580 07
City of Santa Fe Business
Registration # 12-103927

APPROVED:


DR. MELVILLE L. MORGAN, FINANCE DIRECTOR
9/27/12

PSA/Yearout/52102.510300

