



**ACTION SHEET**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 04/04/16**  
**FOR CITY COUNCIL MEETING OF 04/13/16**

**ISSUE:**

23. Request for Approval of Professional Services Agreement – FY 2015/16  
 Completion of Independent Assessment of the Water Utility Billing System  
 Implementation Project for ITT Department; Berry Dunn, LLC. (Renee Martinez)

**FINANCE COMMITTEE ACTION:**

Approved as consent item.

**FUNDING SOURCE:**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR VILLAREAL	X		
COUNCILOR IVES	X		
COUNCILOR LINDELL	Excused		
COUNCILOR HARRIS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

# City of Santa Fe, New Mexico

# memo

DATE: March 15, 2016

TO: Finance Committee

Via Brian Snyder, City Manager  
Robert Rodarte, Purchasing Director

FROM:  Renée Martínez - ITT Department Director, Nick Schiavo – Public Utilities Department Director

RE: Request for Approval of Professional Services Agreement with Berry Dunn, LLC to Complete an Independent Assessment of the Water Utility Billing System Implementation Project (Compensation will exceed \$50,000 in services with Berry Dunn, LLC for Fiscal Year 2015-16)

## BACKGROUND:

The City started a project to implement a new billing and customer information system to support Water Utility services in January 2014. The vendor, Advanced Utility Systems, and solution, CIS Infinity, were selected through a formal Request for Proposal process. The original target completion date for system implementation was January 2015. The project has experienced schedule and budget variances and as of October 2015, the project was placed on hold to allow project management to determine how best to proceed to complete the project.

City stakeholders including the Mayor, City Manager, Public Utilities Department Director and ITT Department Director met in February 2016 to discuss the project and as a result the ITT Department Director was directed to identify a qualified contractor with municipal water utility information system implementation and consulting experience to assist with the project. A Professional Services Agreement has been prepared with Berry Dunn, LLC to conduct an independent assessment of the project and to provide recommendations on how to address all remaining implementation tasks.

BUDGET: BUSINESS UNIT 52205, ACCOUNT 510310. AMOUNT \$24,900 excluding NMGRT

## ACTION:

Request for approval to exceed \$50,000 in purchased services from Berry Dunn, LLC through execution of a new professional services agreement in the amount of \$24,900 excluding NMGRT with Berry Dunn, Inc. to complete a Water Utility Billing System Implementation Assessment. State of New Mexico Price Agreement 40-000-14-00106AL is the procurement vehicle.



**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 Berry Dunn McNeil & Parker, LLC

3 Complete information requested  Plus GRT  
 Inclusive of GRT

Original Contract Amount: \$24,900.00

Termination Date: August 31, 2016

Approved by Council Date: \_\_\_\_\_

or by City Manager Date: \_\_\_\_\_

Contract is for: Independent Assessment of Water Utility Billing System Implementation Project

Amendment # \_\_\_\_\_ to the Original Contract# \_\_\_\_\_

Increase/(Decrease) Amount \$ 0

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

or by City Manager Date: \_\_\_\_\_

Amendment is for: \_\_\_\_\_

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

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

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Total of Original Contract plus all amendments: \$ \_\_\_\_\_



**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 State of New Mexico Price Agreement 40-000-14-00106AL

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

7 **Funding Source:** Water Utility **BU/Line Item:** 52205: 510310

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:** Renee Martinez

Phone # x5565

10 **Certificate of Insurance attached.** (if original Contract)

**Submit to City Attorney for review/signature** *done 3/15/16*  
**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:**

**FINANCE DEPARTMENT-FINANCE COMMITTEE**

**Finance Packet Checklist**

The following information should be included in all packets to ensure your item is not pulled.

<b>Contracts/Agreements/Grants/BARS/Bids/RFP's</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
<b>Memo</b>			
Address memo to Finance Committee-Initialed by all Staff	X		
Provide explanation if and when Budget available	X		
Include Funding Source-Business Unit and Line Item	X		
Include approval term if requesting more than 1 yr			X
Verify term in memo matches term of Contract	X		
Include Vendor awarded the contract	X		
Include Bid/RFP # in memo			X
Submit Electronic /PDF packet to Finance	X		
Submit Originals to the City Clerk's office	X		
<b>Contracts and Agreements</b>			
Attach initialed Memo addressed to Finance Committee	X		
Need approval from legal-must be "Approved As To Form" by City Attorney	X		
Include CRS # in contract	X		
Include Business Registration # in contract	X		
Attach Summary of Contract and Agreement Form	X		
Attach Certificate of Insurance	X		
Attach Procurement Checklist	X		
Submit single sided copy of contract to Finance	X		
Submit Electronic /PDF packet to Finance	X		
Forward Originals to the City Clerk's office	X		
<b>Bids/RFP's/Agreements/Grants</b>			
Route all contracts, MOU's and agreements through Purchasing 1st for "Procurement Checklist"	X		
Forward to City Attorney for "Approved as to Form" Approval	X		
Forward complete contract to Budget Officer for review and approval	X		
Forward BARS-to Accounting for review and signature (Grants or Special Projects)			X
Forward all other BARS directly to Budget Office for review and approval			X
Contracts >\$50k forward to Finance Committee-all others forward to Finance Department	X		

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 Berry Dunn McNeil & Parker, 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

The Contractor shall provide the following services, further described as deliverables in Exhibit "A" attached hereto and incorporated herein:

- A. Perform an independent point-in-time assessment of the City Water Utility Billing System Implementation Project
- B. Develop an Implementation Assessment Report to indicate status of each key assessment area and key open items that need to be addressed
- C. Present and validate the Implementation Assessment Report with City stakeholders

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 twenty-four thousand nine hundred dollars (\$24,900), plus applicable gross receipts taxes.

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 August 31, 2016, unless sooner pursuant to Article 6 below.

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.

(3) If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

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:

Renée Martínez  
ITT Department Director  
2651 Siringo Rd., Building F  
Santa Fe, NM 87501  
(505) 955-5595 office  
(505) 699-9274 mobile  
[rjmartinez@ci.santa-fe.nm.us](mailto:rjmartinez@ci.santa-fe.nm.us)

Contractor:

Chad Snow  
Principal  
100 Middle Street  
Portland, ME 04101  
(207) 541-2294 ext 3048  
[csnow@berrydunn.com](mailto:csnow@berrydunn.com)

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

CITY OF SANTA FE:

CONTRACTOR:

JAVIER M. GONZALES, MAYOR

Chad Snow, Principal

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CRS# 03-323100-00-1  
City of Santa Fe Business  
Registration # 15-0013277-4

ATTEST:

YOLANDA Y. VIGIL  
CITY CLERK

APPROVED AS TO FORM:

*MDM* 3/15/16  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ, FINANCE DIRECTOR

52205.510310  
Business Unit Line Item



March 11, 2016

Ms. Renée Martínez  
ITT Department Director  
City of Santa Fe  
2651 Siringo Rd, Building F  
Santa Fe, NM 87504

*Sent via email to [rjmartinez@ci.santa-fe.nm.us](mailto:rjmartinez@ci.santa-fe.nm.us)*

Dear Ms. Martínez:

Thank you for providing BerryDunn with the opportunity to submit this Statement of Work for a Point-in-Time Assessment of the Utility Billing System Implementation Project for the City of Santa Fe. As independent consultants focused on the public sector, BerryDunn will commit experienced professionals to this work and leverage a proven methodology. We understand the critical nature of an implementation assessment of this nature and the many facets that need to be investigated to understand the current status. Our approach to identifying challenges will be comprehensive so that the City may then develop a plan of action to move forward.

On the following pages, we have outlined how BerryDunn will assist the City in the successful completion of this project.

## **OVERVIEW OF OUR PROPOSED APPROACH**

**1. Conduct Initial Project Planning.** BerryDunn will conduct an initial planning teleconference with the City's project management team and additional stakeholders identified for inclusion by the City. The purpose of this meeting is to clarify goals and objectives, identify known project constraints, refine dates and/or tasks as appropriate, and request names and contact information for City staff members who will be involved in the project. As part of this discussion we will also confirm the critical assessment areas to be the focus of our work. These areas typically include, at a minimum:

- Software configuration
- Interfaces
- Conversion
- Reporting and forms
- Testing
- Training
- Technical and security
- Project and change management

2. **Develop Project Documents.** Based on the information gathered from our initial project planning meeting, BerryDunn will develop the updated Project Schedule, Information Request Sheet, Meeting Schedule, Interview Outlines, communications, and other project documentation to be used in the assessment.
3. **Facilitate Information Request and Review Background Documentation.** Prior to conducting our on-site work, we will submit an Information Request Sheet to the City to request available project artifacts. The documents requested from the City will likely include but not be limited to vendor contracts, configuration design documents, implementation management plan(s), testing scripts and results, and issue and defect logs, among other items.
4. **Facilitate On-site Work Sessions with City Stakeholders.** We will conduct a series of interviews and work sessions with City staff to provide our team with an understanding of the current environment. Our objective will be to review the critical assessment areas and the status of each. We will also clarify any items resulting from our review of project artifacts.  
  
We envision the onsite fact-finding work sessions will take place over two days on-site, with two BerryDunn personnel. Where appropriate, we will consolidate meetings to make best use of City personnel's time and expertise.
5. **Facilitate Work Sessions with Software Vendor.** We will conduct a work session with representatives from the software vendor to understand the current environment and status of each critical assessment area. We will also clarify any items resulting from our review of the project artifacts. If it is determined to be beneficial, we are able to host this meeting at BerryDunn offices or determine an alternate location.
6. **Develop Draft Implementation Assessment Report.** As a result of our fact-finding efforts, including the review of project artifacts and on-site interviews, we will develop a draft of the Implementation Assessment Report. The Report will indicate the status of each critical assessment area, the key items outstanding, and the relative timeframe in which open items should be addressed for the City to move forward.  
  
While our focus will be on the actual status of each area, we will report where stakeholders may have different perceptions of status as we often find this to be the case when implementations experience challenges.
7. **Facilitate Teleconference with City Project Team to Review Draft Report.** We will meet with the City's project team and other stakeholders via teleconference to review the Draft Implementation Assessment Report and validate findings prior to submitting the final draft. A key objective of this teleconference will be to ensure the City team has sufficient knowledge to begin to develop a plan of action to address identified findings.
8. **Update Report and Submit in Final.** Once we have incorporated the City's feedback, we will submit the report in final.

**Deliverable: Implementation Assessment Report**

**PROPOSED PROJECT TEAM**

Table 1 describes the BerryDunn Team for this project and related roles and responsibilities. All proposed team members have extensive experience with the implementation of enterprise software systems in complex environments.

**Table 1: BerryDunn Roles and Responsibilities**

Staff/Role	Responsibilities
Chad Snow, PMP, CFE <i>Project Principal</i>	Chad will lead this work with the City, including serving as point of contact with the City Project Lead, coordinating all project tasks and activities, and leading the BerryDunn team in onsite work sessions and deliverable development.
Seth Hedstrom, PMP <i>Engagement Manager</i>	Seth will serve as the Engagement Manager, as he does with our existing work with the City. In this role Seth will assist Chad and Lori with communications with the City and transfer our existing knowledge of the City's environment to Chad and Lori.
Lori Kleckner, PMP, CISSP, CBCP, ITIL <i>Business Analyst</i>	As Business Analyst, Lori will work collaboratively with project stakeholders to capture challenges in the current environment and document findings in project deliverables.

**PROJECT COSTS**

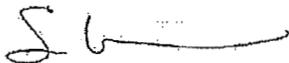
Table 2 presents our fixed-fee, all-inclusive costs for completing the deliverable associated with this project. BerryDunn will progress bill the City on a monthly basis. These costs are based upon the work effort by staff level and corresponding maximum rates from the Statewide Price Agreement for IT Professional Services (40-000-14-00106 AL).

**Table 2: Costs for Project Deliverables**

Cost Area	Mid-Level Hours (\$100/hr)	Senior-Level Hours (\$225/hr)	Total Cost
Deliverable: Implementation Assessment Report	00	00	\$24,300
		Total:	\$24,300

Thank you for thinking of us for this project. We look forward to the opportunity to expand our work with the City. Should you have any questions, please do not hesitate to contact me at (207) 541-2212 or [shedstrom@berrydunn.com](mailto:shedstrom@berrydunn.com).

Sincerely,



Seth Hedstrom  
 Manager





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/28/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Affinity Insurance Services 159 E. County Line Road Hatboro, PA 19040	<b>CONTACT NAME:</b> PHONE (A/C, No., Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Continental Casualty Company</td> <td style="text-align: center;">20443</td> </tr> <tr> <td>INSURER B: North River Insurance Company</td> <td style="text-align: center;">21105</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Continental Casualty Company	20443	INSURER B: North River Insurance Company	21105	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Continental Casualty Company	20443														
INSURER B: North River Insurance Company	21105														
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
<b>INSURED</b> Berry, Dunn, McNeil & Parker, LLC 100 Middle Street Portland, ME 04104															

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS								
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOP AGG \$ \$								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$								
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><input type="checkbox"/> PER STATUTE</td> <td style="width: 50%;"><input type="checkbox"/> OTH-ER</td> </tr> <tr> <td colspan="2">E.L. EACH ACCIDENT \$</td> </tr> <tr> <td colspan="2">E.L. DISEASE - EA EMPLOYEE \$</td> </tr> <tr> <td colspan="2">E.L. DISEASE - POLICY LIMIT \$</td> </tr> </table>	<input type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTH-ER	E.L. EACH ACCIDENT \$		E.L. DISEASE - EA EMPLOYEE \$		E.L. DISEASE - POLICY LIMIT \$	
<input type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTH-ER														
E.L. EACH ACCIDENT \$															
E.L. DISEASE - EA EMPLOYEE \$															
E.L. DISEASE - POLICY LIMIT \$															
A	Professional Liability			APL-188112791	04/01/2015	04/01/2016	\$10,000,000 per claim								
B	Professional Liability			557-101191-6	04/01/2015	04/01/2016	\$10,000,000 annual aggregate								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RFP #15/18/P

<b>CERTIFICATE HOLDER</b> City of Santa Fe 2651 Siringo Rd., Building F Santa Fe, NM 87504	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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State of New Mexico  
General Services Department  
Purchasing Division

Statewide Price Agreement Coversheet

Awarded Vendor  
0000091617  
BerryDunn  
100 Middle Street  
Portland, ME 04101  
  
Telephone No. (207) 541-2323

Contract Number: 40-000-14-00106 AL

Payment Terms: See Contract

F.O.B.: See Contract

Delivery: See Contract

Ship To:  
All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public bodies  
allowed by law.

Procurement Specialist: Teri Arevalo *JA*

Telephone No.: (505) 827-0266

Invoice:  
As Requested  
  
For questions regarding this contract please contact:

Title: IT Professional Services

Term: June 29, 2015 – June 28, 2016

The initial term of this price agreement shall be for one (1) year, effective upon signature by the SPA. After the first year, the SPA reserves the option of renewing any of the initial SWPA on an annual basis for up to three (3) additional one-year terms. In no case will the price agreements, including all renewals thereof, exceed a total of four (4) years in duration.

This Statewide Price Agreement is made subject to the "terms and conditions" shown as indicated on the attached Contract.

Accepted for the State of New Mexico

*Andrea D. Silva*  
\_\_\_\_\_  
New Mexico State Purchasing Agent

Date: 6/30/2015

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

State of New Mexico

General Services Department, State Purchasing Division

Information Technology Agreement

CONTRACT NO. 40-000-14-00106 AL

THIS Information Technology Agreement ("Agreement" or "Contract") is made by and between the State of New Mexico, General Services Department, State Purchasing Division, and BerryDunn, hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the IT Professional Services, RFP # 40-000-14-00106 and the Contractor's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. "Acceptance" or "Accepted" shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.
- B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. "Chief Information Officer ("CIO")" shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as

confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

- G. "Contract Manager" shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement.
- H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.
- I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. "DoIT" shall mean the Department of Information Technology.
- L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.
- N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.
- P. "GRT" shall mean New Mexico gross receipts tax.
- Q. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- R. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
- S. "Know How" shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- T. "Payment Invoice" shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

- U. "Performance Bond" shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- V. "Procuring Agency" means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
- W. "Project" shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT.
- X. "Project Manager" shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close.
- Y. "Qualified" means demonstrated experience performing activities and tasks with Projects.
- Z. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- AA. "Services" shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- BB. "State Purchasing Agent (SPA)" shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- CC. "State Purchasing Division (SPD)" shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- DD. "Software" shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- EE. "Software Maintenance" shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- FF. "Turnover Plan" means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

## ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work for the rate as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. Schedule. The Contractor shall meet the due dates which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.

There are no guarantees as to any specific dollar amount which will be contracted by the individual procuring agencies or the State as a whole.

- C. Facilities and Equipment – The Procuring Agency shall provide contractor personnel with reasonable office work space and facilities include access to a local telephone

service and copy machine usage. The Contractor shall provide contractor personnel with any required computer equipment and software and shall reimburse the procuring agency for all long distance telephone calls charged to the Procuring Agency.

**D. The Procuring Agency's Rights.**

1. Rights to Software. The Procuring Agency will own all right, title, and interest in and to the Procuring Agency's Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the Procuring Agency, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.
2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
3. Rights to Data. Any and all data stored on the Contractor's servers or within the Contractor's custody, in order to execute this Agreement, is the sole property of the Procuring Agency. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Agency's data in any manner, or provide to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency.

**ARTICLE 3 - COMPENSATION**

**All payments under this Statewide Price Agreement are subject to the following provisions:**

- A. Compensation - The approved maximum rates to be paid for services rendered are contained in Exhibit A. The proposed hourly rates shall include the cost of travel to an on-site work place anywhere in the State of New Mexico.

Contracts awarded under this Statewide Price Agreement by a Procuring Agency shall not exceed four (4) years in duration nor exceed \$600,000 per year in cost. Services contracted by a Procuring Agency as part of a DoIT certified Project may not exceed four (4) years in duration nor exceed \$1,200,000 per year in cost.

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

- C. Payment of Taxes - The maximum hourly rate proposed for each IT Professional Service must **not** include New Mexico Gross Receipts Tax (NMGRT) or local taxes. However, the services are subject to all applicable NMGRT. Taxes must be paid at the rate in effect during the period in which services are performed and included at the time of invoice.
- D. Taxes must be paid at the rate in effect during the period in which services are performed and included at the time of invoice. The proposed hourly rates shall include the cost of travel to an on-site work place anywhere in the State of New Mexico.

The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

- E. Invoices – Invoices shall be submitted to the Project Manager.
- F. Retainage. Retainage is Not Applicable to this Statewide Price Agreement; however, contracts awarded under this Price Agreement by a Procuring Agency may elect to retain up to twenty percent (20%) of a fixed-price Deliverable cost for each Deliverable as security for full performance of a Resulting Contract. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.
- G. Performance Bond. Performance Bond is Not Applicable to this Statewide Price Agreement; however, contracts awarded under this Price Agreement by a Procuring Agency will be applicable if the amount of the Agreement exceeds \$1Million OR, if the Agreement is for custom developed software/application, OR Commercial Off the Shelf (COTS) software with greater than 20% Enhancement, OR for any other critical project execution concerns, use the following language, the Procuring Agency may require that the Contractor execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a Performance Bond in the name of the Procuring Agency. The required Performance Bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The Procuring Agency's right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor or to the State of New Mexico as a result of Contractor's failure to perform.

#### ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon completion of agreed upon Deliverables as set forth in a resulting contract with the Procuring Agency, the Contractor shall submit a Payment Invoice with

the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price.

- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:
1. Complies with the Deliverable requirements;
  2. Complies with the terms and conditions of the RFP 40-000-14-00106;
  3. Meets the performance measures for the Deliverable(s);
  4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
  5. Complies with all the requirements of the resulting contract.

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

- C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

#### ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE SPA.

The initial term of the price agreements(s) shall be for one (1) year, effective upon signature by the SPA. After the first year, the SPA reserves the option of renewing any of the initial SWPA(s) on an annual basis for up to three (3) additional one-year terms, by mutual agreement of all parties and approval of the New Mexico State Purchasing Agent at the same price, terms and conditions. In no case will the price agreements, including all renewals thereof, exceed a total of four (4) years in duration, unless terminated pursuant to Article 6.

#### ARTICLE 6 – TERMINATION

- A. Grounds. State Purchasing may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the State's uncured, material breach of this Agreement.
- B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. Notice; Agency Opportunity to Cure.
1. Except as otherwise provided in Paragraph (3), the State shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
  2. Contractor shall give the State written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the State's material breaches of this Agreement upon which the termination is based and (ii) state what the State must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the State does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the State does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
  3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the State; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.
- D. Liability. Except as otherwise expressly allowed or provided under this Agreement, the State's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a

notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

#### ARTICLE 7 - TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the State and/or Procuring Agency property in which the State has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the State;
  2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Procuring Agency;
  3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
  4. Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
  5. Agree that the State is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
  6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of the State and/ or the Procuring Agency's programs;
  7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction;
  8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the State and/or Procuring Agency for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
  9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the State for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Agency and the substitute vendor in transferring information and Services. The

Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Agency, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

- B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:
1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
  2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

#### ARTICLE 8 – INDEMNIFICATION

- A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT.
- B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

#### ARTICLE 9 – INTELLECTUAL PROPERTY

- A. Ownership. Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Know How. The Procuring Agency shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency. Contractor shall notify the Procuring Agency, within fifteen (15) Business Days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the Procuring Agency and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Procuring Agency. If, by judgment of a court of competent jurisdiction, Intellectual Property or Know How are not deemed to be created or owned by the Procuring Agency, Contractor hereby acknowledges and agrees to grant to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.

#### ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:
1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
  2. Work with the Contractor to control the defense and settlement of the claim; and
  3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

- B. Procuring Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:
1. Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
  2. Replace or modify the product or service so that it becomes non-infringing; or
  3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

#### ARTICLE 11 - WARRANTIES

- A. General. The Contractor hereby expressly warrants all services provided under this Agreement as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.
- B. Software. Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for one (1) year after Acceptance and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

#### ARTICLE 12 – CONTRACTOR PERSONNEL

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written notice of the State. Key Staff must include a dedicated staff member qualified and responsible in managing the Procuring Agency engagement for the listed IT Professional Service(s) along with the education, qualifications, and work experience. Key personnel are those individuals considered by the State to be mandatory to the work to be performed under this Agreement.
- B. Personnel Changes. Contractor agrees that changes in staff or assignments during the term of the Agreement will not result in additional cost to the State for training or "bringing up to speed" replacement personnel. Replacement of any personnel shall be

made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

#### ARTICLE 13 – STATUS OF CONTRACTOR

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

#### ARTICLE 14 - CHANGE MANAGEMENT

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

3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
  - (a) the name of the person requesting the change;
  - (b) a summary of the required change;
  - (c) the start date for the change;
  - (d) the reason and necessity for change;
  - (e) the elements to be altered; and
  - (f) the impact of the change.
2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

#### ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

- A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
  1. Providing the Project documentation;
  2. Allowing the IV&V vendor to sit in on the Project meetings; and
  3. Supplying the IV&V vendor with any other material as directed by the Project Manager.
- B. If this Agreement is for IV&V professional Services then the Contractor agrees to:
  1. Submit all reports directly to the Department of Information Technology, Project Oversight and Compliance Division ([epmo@state.nm.us](mailto:epmo@state.nm.us)) according to the DoIT IV&V Reporting Template and Guidelines found on the DoIT website, [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html), and copy the Procuring Agency.
  2. Use a report format consistent with the current DoIT IV&V Reporting Template and Guidelines found on the DoIT website, [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html).

#### ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

#### ARTICLE 17 – EQUITABLE REMEDIES

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

#### ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

#### ARTICLE 19 -- ASSIGNMENT

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

#### ARTICLE 20 – SUBCONTRACTING

- A. General Provision. No subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.

- B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

#### ARTICLE 21 – RELEASE

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

#### ARTICLE 22 – CONFIDENTIALITY

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

#### ARTICLE 23 – CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or Services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

#### ARTICLE 24 - RECORDS AND AUDIT

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

#### ARTICLE 25 - AMENDMENT

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

Exhibit A rates may be amended after the first year at the time of renewal, if exercised; any proposed increase in the maximum rates for each authorized Professional Service shall not exceed the lower of three percent (3%), or the increase in the published Consumer Price Index (or other index approved by the Agreement Administrator) during the previous agreement term. Contractors may not be renewed if they do not adhere to all terms and conditions of this Agreement, including administrative reporting and fee submission.

#### ARTICLE 26 - NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwnewmexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

#### ARTICLE 27 - NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

- A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has

(250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

- B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.
- C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

#### ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

- A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

## ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

**For the State Purchasing Agent**  
Lawrence Maxwell  
State Purchasing Agent  
Joseph M. Montoya State Building, Room 2016  
1100 St. Francis Drive  
Santa Fe, New Mexico 87504  
Mailing Address: P.O. Drawer 6850  
Santa Fe, NM 87502-0110

**For CONTRACTOR**  
Timothy Masse, Principal  
BerryDunn  
tmasse@berrydunn.com  
100 Middle Street  
Portland, ME 04101

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

## ARTICLE 30 – GENERAL PROVISIONS

- A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
  2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed

under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

#### ARTICLE 31 - SURVIVAL

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

#### ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

#### ARTICLE 33 -- FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the

denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**ARTICLE 34 - ADMINISTRATIVE REPORTING**

The Contractor agrees to provide a Utilization Report to the Agreement Administrator in accordance with the following schedule:

<u>Quarter</u>	<u>Period</u>	<u>Report Due</u>
First	July 1 - September 30	October 31
Second	October 1 - December 31	January 31
Third	January 1 - March 31	April 30
Fourth	April 1 - June 30	July 31

The periodic report shall include the gross total sales for the period subtotaled by procuring agency name. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to three quarters of one percent (0.75%) of the total sales for the period.

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

By: Timothy J. Masse Date: 6/24/15  
Timothy Masse  
Principal, BerryDunn

Approved for legal sufficiency:

By: Jay R. Hone Date: 6/26/15  
Jay R. Hone  
General Services Department, General Counsel

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 03 323100 00 1

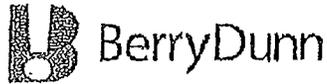
By: Demetrios Date: 6/29/15  
Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: Jaqueline Miller Date: 6/26/15  
Darryl Ackley, State CIO and Cabinet Secretary  
Department of Information Technology

This Agreement has been approved by the State Purchasing Agent:

By: Lawrence O. Maxwell Date: 6/29/15  
Lawrence O. Maxwell,  
Purchasing Agent for the State of New Mexico



### Cost Response Form

Offerors must provide a Maximum Hourly Rate for each IT Professional Service Category proposed, and for each Job level proposed within an IT Professional Service Category. Local Public Bodies will be able to utilize the awarded Statewide Price Agreements and they may be able to use the Maximum Hourly Rate. Executive Agencies must be able to tie back to the Maximum Hourly Rate from a fixed price, deliverables based contract.

Job levels are:

- I: Junior level (1-4 years of experience)
- II: Mid-level (4-6 years of experience)
- III: Senior level (7+ years of experience)

The maximum firm hourly rate proposed for each IT Professional Service must not include state gross receipts tax or local taxes. Taxes will be included as part of the awarded procuring agency contract(s) but should not be included in the base maximum hourly rate proposed. The proposed hourly rates shall include the cost of travel to the on-site work place anywhere in the State of New Mexico.

OFFEROR: Berry Dunn McNeil & Parker, LLC (doing business as BerryDunn)

IT Professional Service Category No.	IT Professional Service Category	Fixed Maximum Hourly Rate for the IT Professional Service Category		
		Junior Level	Middle Level	Senior Level
1	Application Support and Development			
2	IT Project Management, Planning, & Analysis Services	\$130	\$180	\$290
3	Database Management Services and Business Intelligence			
4	Geospatial Technological Services			
5	End User Support Services			
6	Systems Administration Services			
7	Network Services			
8	IT Security Services	\$130	\$180	\$290
9	Independent Verification and Validation Services	\$130	\$180	\$290
10	Computer Aided Design			



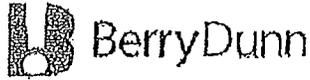
IT Professional Service Category No.	IT Professional Service Category	Fixed Maximum Rate per person per year for IT Research and Advisory Services
11	Information Technology Research and Advisory Services	

IT Professional Service Category No.	IT Professional Service Category - IT Training Services			
12	IT Training Services			
Class Name	Duration	Skill Level (Introductory, Intermediate, advance, etc.)	Max. number of Students	Cost Per Class and Student*

\*Cost per class must be provided in lieu of an hourly rate

IT Professional Service Category No.	IT Professional Service Category	Fixed Maximum Hourly Rate for the IT Professional Service Category		
		Junior Level	Middle Level	Senior Level
13	Electronic Content Management (ECM)			

IT Professional Service Category No.	IT Professional Service Category	Fixed Maximum Rate Per Page
14	Date Conversion Services	



By submitting a proposal, the Offeror acknowledges they have qualified personnel and business experience to fulfill the IT professional services as listed within this RFP. Awarded Offerors will only assign qualified personnel to any contracts awarded under this RFP and awarded Statewide Pitca Agreements.

BerryDunn McNeil & Parker, LLC (dba BerryDunn)  
Offeror Representative Company

April 22, 2015  
Date signed

  
Offeror Representative Signature

Timothy F. Masse, Principal  
Offeror Representative Printed Name