

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, JULY 7, 2014**

ITEM 12

REQUEST FOR APPROVAL OF RFP 14/08/P PERFORMANCE STUDY AND PROFESSIONAL SERVICES AGREEMENT WITH PUBLIC WORKS LLC FOR A TOTAL AMOUNT NOT TO EXCEED \$200,000 INCLUDING GROSS RECEIPTS TAX (**ROBERT RODARTE**)

PUBLIC WORKS COMMITTEE ACTION: No Recommendation; forward to Finance Committee

FUNDING SOURCE:

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

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

City of Santa Fe, New Mexico

memo

DATE: June 30, 2014

TO: Public Works/ Finance Committees

FROM: Robert Rodarte, Officer
Purchasing Division 

SUMMARY: Award of Request for Proposal # 14/08/P
Vendor: Public Works LLC, (PA)

During the May 27th Public Works Committee Meeting, at the discretion of the Public Works Director Ike Pino, the decision was made to postpone the discussion of RFP 14/08/P until the meeting of July 7th, 2014. The main purpose was to better clarify the scope of work to be provided by the selected qualified submitter Public Works, LLC, along with better clarification of the compensation method.

Public Works, LLC has submitted a short review memo on their methodology and will be present to answer any question that may arise.

Robert Rodarte, CPPO, CPPB
Purchasing Officer
The City of Santa FE



An Efficiency Review for Santa Fe

Public Works has conducted more efficiency studies of entire state governments than any other consulting firm in the country. Besides reviews of five state governments (including New Mexico), we have developed efficiency and savings plans for individual state agencies as well as cities, counties and school districts in a dozen states – including Chicago, IL; Louisville, KY; Binghamton, NY; and Glendale, CA.

A Performance Review is designed to challenge assumptions. It is not an audit that checks to ensure money is spent according to acceptable accounting practices. It is a process that defines how services are provided, how business is conducted, what emerging demands are being placed on government agencies and departments – and how effectively and efficiently are the processes, procedures, policies, technology, and organizations responsible for the services operating. The end result of a Performance Review is the identification of recommendations: to reduce inefficiency and ineffectiveness; to improve services and the way business is conducted; to identify new technology to support operations; to establish ways an organization must change to meet changing demands; and to establish organizational structures, policies and procedures to most effectively and efficiently deliver services to citizens.

Some noteworthy results from our Performance Reviews elsewhere include:

- The **State of Iowa** completed a statewide performance review, identifying 90 recommendations for a total of \$340.9 million savings/non-tax new revenue in the first year, \$1.7 billion over five years.
- **Colorado's** statewide review yielded \$205 million in savings or new revenue over five years.
- In **West Virginia** in just seven agencies and cross-department functions, 100 recommendations yielded just over \$300 million in savings.
- **New Mexico's** two-part review found \$379 million in savings or new revenue.
- Our review of the **City of Chicago** budget identified at least \$147 million in annual savings from increased competition in bidding out public services, reducing unneeded middle-management levels, improving procurement procedures, utilizing new materials in sidewalk maintenance, using more flexible work hours for construction crews, and similar recommendations.

What exactly do we do? Our Performance Review model calls for eight major activities:



paying, could save the City 72 percent on this contract, or \$3.6 million per year. This does not include the overtime savings now being incurred because of the delays in current services.

- **Consolidate solid waste services in the Louisville Metro area.** Because each household in the unincorporated areas of Jefferson County, surrounding Louisville, is required by ordinance to contract individually for solid waste pick-up, different haulers can be found picking up each day of the week at different houses on the same street. One option the County could consider to produce cost savings is for Louisville Metro to coordinate a solid waste contract. Calculations based on Louisville Metro solid waste expenditures show that the cost of residential once-per-week trash pick-up ranges between about \$9 and \$10.50 per month for residents of the urban services district, which has remained about the same since 2005. In comparison, four of the five haulers operating in the county are charging between \$15.58 and \$20.83 per month (the rates for one of the haulers is unknown). And 15 of the incorporated cities report having contracts with haulers that range from \$10 per household per month in Jeffersontown to \$31.32 per household per month in Windy Hills. The average among the 15 cities reporting this information is \$17.37.

- **Properly calibrate salt spreaders on West Virginia snowploughs.** The West Virginia Department of Highways (DOH) spends more than \$30 million each year on snow removal and ice control. Materials alone surpass \$11 million in taxpayer costs. The snow removal and ice control expenses are about one-eighth the total annual DOH maintenance budget of \$250 million. The DOH lacks an adequate plan to train employees on the proper calibration of salt and cinder spreaders under different weather conditions and after major component repairs. In particular, the agency doesn't carefully monitor the use and calibration of salt and cinder spreaders to minimize the waste of expensive materials. The DOH should be reviewing the application of materials regularly to insure that operators are using the correct mixture and application rates. According to DOH personnel, proper calibration of spreaders actually cut the amount of time spent on snow removal and ice control activities. Our original analysis showed that taxpayer savings of between one percent and five percent are likely if this recommendation is adopted. Officials with two private companies that have supplied equipment to DOH estimate that savings could reach as high as 25 percent. Some of the equipment, they point out, has never been recalibrated since it left the factory. Initial trials found that the State could save \$3 million a year in savings just from road salt by adopting our recommendations.

AMER, JUDITH E.

From: Eric Schnurer <eschnurer@public-works.org>
Sent: Tuesday, May 27, 2014 3:10 PM
To: AMER, JUDITH E.; RODARTE, ROBERT F
Subject: Proposal
Attachments: Santa Fe Projections.docx

Judith:

Per our conversation, here is a proposed approach. If this is acceptable, I can try reducing this to contract language, but here's the concept first. Basically, instead of what I proposed last week, there would be nothing due when the report is tendered; payments would come due only as the savings are actually implemented, so the City could pay us out of savings, not have to find the money elsewhere in the budget. But I'm requesting that, once the City has agreed that it will in fact receive these savings, it pay off at a rate of 50% of the savings' actual achievement, rather than 10% (because otherwise the payments take way too long) -- but with the amount still capped at the 10%/\$200,000 level. The explanatory detail is attached.

The main thing is, again, this will require the City to agree as to what it will implement and how much that will save -- these aren't just our projections: If the City doesn't agree to the recommendations and what the likely savings are, we don't get to count them. In return, the City has to deal with us in good faith -- it can't just reject ideas that are worthwhile to avoid paying us and then later implement them, or intentionally low-ball numbers just to pay us less -- and, once it agrees that it really will achieve those savings, it has to pay based on that. But the payments will come due only as the savings are scheduled (and agreed) to materialize.

I hope you feel that this adequately protects both sides' interests.

Please let me know any questions you have.

Thanks,
Eric

Eric B. Schnurer
President

Public Works LLC
1690 East Strasburg Road
West Chester, PA 19380
(610) 296-9443
www.public-works.org

Follow us on Twitter: [@PublicWorksLLC](https://twitter.com/PublicWorksLLC)

#10

City of Santa Fe, New Mexico

memo

DATE: May 22, 2014

TO: Public Works Committee
Finance Committee

FROM: Robert Rodarte, Purchasing Officer *RR*
Purchasing Division

VIA: Marcos A. Tapia, Director *MT*
Finance Department

ISSUE: Award of Request for Proposal # '14/08/P
Performance Evaluation Services for Various Departments

SUMMARY:

On September 30, 2013, four proposals were received for the above referenced service as follows:

	Evaluation Score
Public Works LLC, PA	1430
Zuckers Systems, CA	1082.5
Matrix Consulting Group, CA	922.5
Program Works, WA	565

The evaluation criteria consisted of scope of work (35%); experience (25%); past performance (20%); and project cost (20%). The proposal was reviewed and evaluated by Robert Rodarte, Purchasing, Bobbi Mossman, Public Works and Liza Kerr, Internal Auditor.

The using department has reviewed the proposals and recommends award to Public Works LLC, PA.

The funding for this service will come from the various departments realized savings related to this study.

ACTION:

It is requested that this recommendation of award to Public Works LLC, PA, be reviewed, approved and submitted to the City Council for its consideration.

Attachment(s):

1. A copy of the professional service agreement
2. A copy of tabulation score sheet.

EVALUATION SCORES

PERFORMANCE EVALUATION SERVICES FOR VARIOUS DEPARTMENT

'14/08/P

Written Evaluation

RFP Submittals	Public Works LLC	Zuckers Systems	Matrix Consulting Group	Program Works
Robert Rodarte	480	375	300	220
Bobbi Mossman	450	337.5	320	180
Liz Kerr	500	370	302.5	165
Total	1430	1082.5	922.5	565



Agenda

**PUBLIC WORKS/CIP & LAND USE
COMMITTEE MEETING
CITY COUNCIL CHAMBERS
MONDAY, FEBRUARY 11, 2013
4:45 P.M.**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM JANUARY 28, 2013 PUBLIC WORKS COMMITTEE MEETING

INFORMATIONAL AGENDA (UP TO 10 MINUTES)

6. PRESENTATION FROM PUBLIC WORKS LLC (ISAAC PINO)

CONSENT AGENDA (15 MINUTES)

7. CIP PROJECT #414A - LA TIERRA TRAILS: CAMINO DE LOS MONTOYAS URBAN TRAIL FROM NM 599 UNDERPASS CONNECTION TO MILAGRO ROAD
 - REQUEST FOR APPROVAL TO CONTRACT FOR CONSTRUCTION USING ON CALL CONSTRUCTION SERVICES AGREEMENT WITH H.O. CONSTRUCTION, INC. AND APPROVAL OF CHANGE ORDER #2 IN THE AMOUNT OF \$450,371 (EXCLUSIVE OF NMGRY) (LEROY PACHECO)

Committee Review:

Finance Committee (Scheduled)	02/18/13
Council (Scheduled)	02/27/13

8. CIP PROJECT #419A & B - ST. FRANCIS DRIVE/ARROYO DE LOS CHAMISOS MULTI-USE TRAIL & UNDERPASS
 - REQUEST FOR APPROVAL OF CHANGE ORDER #5 - FINAL CHANGE ORDER FOR QUANTITY ADJUSTMENTS IN THE AMOUNT OF \$94,645.90, PLUS \$7,749.13 (NMGRY) FOR A TOTAL AMOUNT OF \$102,395.03 (LEROY PACHECO)

Committee Review:

Finance Committee (Scheduled)	02/18/13
Council (Scheduled)	02/27/13

9. REQUEST FOR APPROVAL OF AMENDMENT #3 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) BETWEEN CITY OF SANTA FE AND ASI OF NEW MEXICO LLC, DATED MARCH 31, 2010 (JIM MONTMAN)



5. COST PROPOSAL

A comprehensive review of the entire Santa Fe city government would require six months. We project that this could identify \$2.2 million in annual, recurring General Fund savings; there would be additional savings achievable in enterprise functions.

We propose to carry out this review on a pay-for-performance basis: We will charge the city only as we identify actual savings the city can and will achieve as a result of our review.

We propose to charge 10 percent of the average annual savings we identify, with a cap of \$200,000.

- We normally prepare 5-year projections on all recommendations. This is to take account of the fact that some recommendations require an upfront investment, or need to be phased in, so that full savings potential is not realized for several years. Other ideas can produce a one-time savings or bump in revenues, but nothing beyond that, and we do not want to artificially inflate the apparent long-term benefit of the program with such one-time "hits." Thus, we use multi-year projections, and our performance and compensation would be based on the five-year *average*, to reflect the truest measure of the city's on-going benefit.
- This means that, for the most part, the city will enjoy the benefits of these savings year after year, but will only pay for them once. Thus, for example, if we achieve \$1 million in annually-recurring savings we project the city would pay 10 percent (\$100,000) for that *once*, but continue to receive the \$1 million benefits of more efficient operations every year thereafter at no additional cost.
- The consultant payment is capped at \$200,000. Thus, even if we achieve the \$2.2 million annual General Fund savings we project, plus the additional savings we believe are achievable in enterprise functions, the cost to the city will not increase and it will receive those savings free of additional charge.
- Determination of the value of savings and efficiencies identified would be made jointly by the City and Public Works. The city manager will certify in writing, whenever asked by Contractor, whether the city already plans to implement a proposed recommendation under consideration by Contractor; we will only charge for ideas the city was not already considering. City officials will be bound by a duty of good faith in making these determinations, of course.

This would mean that we wouldn't be paid in full until 14 months after our work was *completed* – 18 or 19 months after we start. In fact, it would be about a year before we'd see roughly *half* the payment for our work, even though by then it would be well-established that the City was actually saving money from it.

Instead, I propose to split the gains with the City each month until we hit the amount we're projected to receive (the \$200,000 cap, or lower if we don't come up with at least \$2 million in projected savings). That would look like this:

	Month											
	1	2	3	4	5	6	7	8	9	10	11	12
Monthly Savings	\$50,000	\$60,000	\$70,000	\$80,000	\$90,000	\$100,000	\$120,000	\$140,000	\$160,000	\$180,000	\$200,000	\$250,000
Annual Savings												\$1.5M
Monthly Consultant Payment	\$25,000	\$30,000	\$35,000	\$40,000	\$45,000	\$25,000	\$0	\$0	\$0	\$0	\$0	\$0
Total Consultant Payment	\$25,000	\$55,000	\$90,000	\$130,000	\$175,000	\$200,000						
Net Gain to City	\$25,000	\$55,000	\$90,000	\$130,000	\$175,000	\$250,000	\$370,000	\$510,000	\$670,000	\$850,000	\$1,050,000	\$1,300,000
	13	14	15	16	17	18	19	20	21	22	23	24
Monthly Savings	\$250,000	\$250,000	\$275,000	\$275,000	\$300,000	\$300,000	\$325,000	\$325,000	\$430,000	\$430,000	\$440,000	\$440,000
Annual Savings												Annual Savings: \$4.4M
Monthly Consultant Payment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Consultant Payment												
Net Gain to City	\$1,550,000	\$1,800,000	\$2,075,000	\$2,350,000	\$2,650,000	\$2,950,000	\$3,275,000	\$3,600,000	\$4,030,000	\$4,460,000	\$4,900,000	\$5,340,000

Under this method, we'd be paid off in six months (starting after the project's completion, or nearly one year after we start work). While we would receive 50% of the savings as realized for the first six months, the total still would be capped at 10% of projected savings or \$200,000, whichever is less. The City would at all times be saving *more* than what it is paying the consultants, and can pay us out of those savings, and after roughly six months *all* savings will accrue to the City.

- As part of our final report, we will lay out an implementation schedule for each recommendation along with a month-by-month projection of savings to be achieved through that schedule. That schedule, and the resulting month-by-month savings projections, will be agreed to and approved by the city budget director.
- The resulting, specified savings will be withheld monthly from the appropriate agency or office budget. (E.g., if it is agreed that changes in fleet procedures will save \$15,000 the first month and then \$30,000 each month thereafter, the fleet division's budget would be reduced by \$15,000 the first month below the amount previously budgeted.)
- Those savings will then be available for paying the consulting fees.
- We anticipate saving the city \$2-\$4M/year once the recommendations are fully phased-in. For purposes of illustration, let's assume total savings distributed as follows:

	Month											
	1	2	3	4	5	6	7	8	9	10	11	12
Monthly Savings	\$50,000	\$60,000	\$70,000	\$80,000	\$90,000	\$100,000	\$120,000	\$140,000	\$160,000	\$180,000	\$200,000	\$250,000
Annual Savings												\$1.5M
	13	14	15	16	17	18	19	20	21	22	23	24
Monthly Savings	\$250,000	\$250,000	\$275,000	\$275,000	\$300,000	\$300,000	\$325,000	\$325,000	\$430,000	\$430,000	\$440,000	\$440,000
Annual Savings												Annual Savings: \$4.4M

Under this scenario, we'd be entitled to the maximum payment of \$200,000. The question is the payment schedule. If we simply get 10% of the savings each month as they accrue, our payment would look like this:

	Month											
	1	2	3	4	5	6	7	8	9	10	11	12
Monthly Savings	\$50,000	\$60,000	\$70,000	\$80,000	\$90,000	\$100,000	\$120,000	\$140,000	\$160,000	\$180,000	\$200,000	\$250,000
Annual Savings												\$1.5M
Monthly Consultant Payment	\$5,000	\$6,000	\$7,000	\$8,000	\$9,000	\$10,000	\$12,000	\$14,000	\$16,000	\$18,000	\$20,000	\$25,000
Total Consultant Payment	\$5,000	\$11,000	\$18,000	\$26,000	\$35,000	\$45,000	\$57,000	\$71,000	\$87,000	\$105,000	\$125,000	\$150,000
Net Gain to City	\$45,000	\$99,000	\$162,000	\$234,000	\$315,000	\$405,000	\$513,000	\$639,000	\$783,000	\$945,000	\$1,125,000	\$1,350,000
	13	14	15	16	17	18	19	20	21	22	23	24
Monthly Savings	\$250,000	\$250,000	\$275,000	\$275,000	\$300,000	\$300,000	\$325,000	\$325,000	\$430,000	\$430,000	\$440,000	\$440,000
Annual Savings												Annual Savings: \$4.4M
Monthly Consultant Payment	\$25,000	\$25,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Consultant Payment	\$175,000	\$200,000										
Net Gain to City	\$1,575,000	\$1,800,000	\$2,075,000	\$2,350,000	\$2,650,000	\$2,950,000	\$3,275,000	\$3,600,000	\$4,030,000	\$4,460,000	\$4,900,000	\$5,340,000

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 Public Works LLC (the "Contractor"). The date of this Agreement shall be when signed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor's Response to the RFP #14/08/P sets forth the services and deliverables as described in the RFP attached hereto as Exhibit A.

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. After the Contractor performs an evaluation of various City department practices and procedures, as part of the Contractor's final report, the Contractor shall lay out an implementation schedule for each recommendation along with a month-by-month projection of savings to be achieved through that

schedule. That schedule, and the resulting month-by-month savings projections, will be agreed upon and approved by the City Council.

B. Upon the City Council's acceptance of the Contractor's final report, the City shall pay to the Contractor an amount not to exceed 10% of the accepted projected savings, agreed upon and approved by the City Council, not to exceed \$100,000. Such agreement and acceptance means that *the City itself* expects to realize these savings as projected in the Contractor's final report.

C. The City will not be obligated to pay any further commission on the agreed upon and accepted projected savings until those savings actually accrue and are realized in excess of the initial \$100,000. The remaining commission will be paid at a rate of 10% of agreed upon and projected savings as those savings actually accrue and are realized, up to the cap amount (a total of \$200,000), i.e. another \$100,000. After that, any further savings will continue to accrue to the City, but there are no further consulting payments due.

D. In no event shall the total compensation paid pursuant to this Agreement exceed two hundred thousand dollars (\$200,000.00), including gross receipts tax.

E. 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.

G. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed and deliverables delivered to the City. Compensation shall be paid only for services actually performed and accepted by the City and deliverables received 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 last and terminate on June 30, 2017, unless sooner pursuant to Article 6 below.

6. TERMINATION

This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor. 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. Since Compensation is not based upon hourly rates

for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed and accepted by the City through the date Contractor receives notice of such termination, and for which compensation has not already been paid and prior approved reimbursable 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 contract.

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. If applicable, the 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:
Finance Director
City of Santa Fe

Contractor:
Public Works LLC
1690 East Strasburg Road
West Chester, PA 19380

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

CITY OF SANTA FE:

JAVIER GONZALES, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

CONTRACTOR:

APPROVED AS TO FORM:

By: _____
(Name & Title)

Quinn Morfor
KELLEY BRENNAN, INTERIM CITY ATTORNEY

6/8/14

CRS # _____
City of Santa Fe Business
Registration # _____

APPROVED:

MARCOS TAPIA, DIRECTOR
FINANCE DEPARTMENT

BUSINESS UNIT/LINE ITEM