



**ACTION SHEET  
CITY COUNCIL COMMITTEE MEETING OF 05/27/15  
ITEM FROM FINANCE COMMITTEE MEETING OF 05/18/15**

**ISSUE:**

47. Request for Approval of Amendment No. 3 to Agreement Between Owner and Contractor – City-Wide Water Utility and Construction Repair Projects for Water Division; Sub Surface Contracting, Inc. (Bill Huey and Alex Puglisi)

**FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM**

Requested approval of amendment no. 3 to agreement between owner and contractor for city-wide water utility and construction repair projects for water division with Sub Surface Contracting, Inc. in the amount of \$500,000 plus gross receipts tax.

**FUNDING SOURCE: 52305.572970**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

<b>ACTION SHEET</b>	
<b>PUBLIC UTILITES COMMITTEE MEETING OF 5/6/15</b>	
<b>ISSUE NO. 16</b>	
Request for approval of Amendment No. 3 to the contract with Sub Surface Contracting for a term extension through June 30, 2016 and an increase of \$500,000.00 (\$250k T&D Section and \$250k SOS Section) exclusive of NMGR. (Bill Huey and Alex Puglisi)	
Public Utilities Committee – 5/6/15 Finance Committee – 5/18/15 City Council – 5/27/15	
<b>PUBLIC UTILITES COMMITTEE ACTION: Approved on Consent.</b>	
<b>SPECIAL CONDITIONS OR AMENDMENTS:</b>	
<b>STAFF FOLLOW UP:</b>	

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	Excused		
COUNCILOR MAESTAS	X		
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	Excused		
COUNCILOR IVES	X		

# City of Santa Fe, New Mexico

# memo

**DATE:** April 17, 2015  
**TO:** PUC Committee/ Finance  
**VIA:** Nick A. Schiavo, Interim Public Utilities Department and Water Division Director  
**FROM:** Alex A Puglisi, Interim SOS Section Manager and Environmental Compliance Officer  
Michael R. Moya, T&D Section Manager  
Bill Huey, Water Division Engineer

## ITEM AND ISSUE:

Request approval of Amendment #3 with Sub Surface Contracting, Inc. to increase the amount of compensation by five-hundred thousand (\$500,00.00) plus tax to allow for continuation of needed repair work, routine water line replacements, and emergency repairs throughout the City until June 30, 2016.

## BACKGROUND AND SUMMARY:

In July 31, 2013, Bid # '13/37/B was awarded by City Council to Sub Surface Contracting, Inc. (Sub Surface). The City Wide Water Utility Construction Contract is a requirements contract with the Water Division issuing work orders as needed for work such as water line replacements, and emergency repairs. The contract is funded with \$250,000 from Transmission and Distribution for work on their infrastructure and with \$250,000 from Source of Supply for work on their infrastructure. Therefore the initial Contract amount is limited to \$500,000.00 plus New Mexico Gross Receipt Tax (NMGRT) per year.

During FY 13/14 and FY 14/15 Sub Surface replaced tapping saddles on eighty-two (82) of the ninety-four (94) air relief valves (ARV)s on the Buckman Pipeline after one of the ARV tapping saddles failed in July 2013. This work removed a major potential failure source from the pipeline. The remaining 12 ARVs are installed on tees that are as strong as the pipeline.

This amendment will also extend the contract to the end of the next fiscal year.

Funding for this work will be available upon Council approval of the FY 15/16 Budget in Line Extensions Mains and Services BU/LI 52305.572970 in the amount of \$500,000.00 plus NMGRT.

## ACTION REQUESTED:

Staff requests review and approval of:

- Amendment No. 3 with Sub Surface in the amount of \$500,000.00 plus NMGRT.
- Forwarding and recommendation of approval amendment # 3 to the Finance Committee on May 18<sup>th</sup> for their consideration and approval and to the Governing Body on May 27<sup>th</sup> for their final consideration and approval.

**CITY OF SANTA FE  
AMENDMENT No. 3 TO  
THE AGREEMENT BETWEEN OWNER AND CONTRACTOR  
ITEM#13-0768**

AMENDMENT No. 3 (the "Amendment") to the CITY OF SANTA FE AGREEMENT, dated July 31, 2013 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor, whichever occurs last.

**RECITALS**

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

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

1. COMPENSATION.

A. Article 4 paragraph 4.1 of the Agreement is amended to increase the amount of compensation by a total of five hundred thousand dollars (\$500,000) and the gross receipts tax (GRT) amount by a total of forty thousand nine hundred thirty seven and 50/100's (\$40,937.50), so that Article 4 paragraph 4.1 reads in its entirety as follows:

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

Sum of two million one hundred twenty two thousand nine hundred twenty seven dollars and 48/100's (\$2,122,927.48). The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the City immediately. The GRT amount of one hundred seventy three thousand nine hundred fourteen dollars and 68/100's (\$173,914.68) is 8.1875% of Base Bid and is being paid by the Owner to the Contractor so that the Contractor can pay the GRT to the New Mexico Taxation and Revenue Department (NMTRD). It is not compensation for services rendered. The Contractor agrees to timely remit this GRT to NMTRD.

2. TERM.

Article 2 of the Agreement is amended to extend the term of the Agreement, so that Article 2 reads in its entirety as follows:

This Agreement shall terminate on June 30, 2016.

3. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No.2 to the City of Santa Fe Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:  
SUB SURFACE CONTRACTING

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

\_\_\_\_\_  
NAME & TITLE

ATTEST:

YOLANDA. Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

 4/16/15  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ, FINANCE DIRECTOR

52305.572970  
Business Unit/Line Item



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

**Section to be completed by department for each contract or contract amendment**

1 **FOR:** ORIGINAL CONTRACT  or CONTRACT AMENDMENT

2 Name of Contractor Sub Surface Contracting Inc.

3 Complete information requested  Plus GRT  
 Inclusive of GRT

Original Contract Amount: \$400,000.00

Termination Date: June 30, 2014

Approved by Council Date: July 31, 2013

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

**Contract is for:** City Wide Utility Repair

Amendment # 3 to the Original Contract# 130768

Increase/(Decrease) Amount \$ 500000

Extend Termination Date to: June 30, 2016

Approved by Council Date: Pending

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

**Amendment is for:** New FY comp and term

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

Amount \$ 400,000.00 of original Contract# 130768 Termination Date: 06/30/2014

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

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

Reason: air valve increase comp

Amount \$ 811,463.74 amendment # 2 Termination Date: 06/30/2015

Reason: Increase compensation and term for City Wide and Air Valves

Amount \$ 500,000.00 amendment # 3 Termination Date: 06/30/2016

Reason: New FY increase to comp and term

Total of Original Contract plus all amendments: \$ 2,122,927



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

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

RFP# \_\_\_\_\_ Date: \_\_\_\_\_
RFQ [checked] 1337b \_\_\_\_\_ Date: June 17, 2013
Sole Source [unchecked] \_\_\_\_\_ Date: \_\_\_\_\_
Other \_\_\_\_\_

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

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

8 Any out-of-the ordinary or unusual issues or concerns:
none
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez
Phone # 955-4271

10 Certificate of Insurance attached. (if original Contract) [unchecked]

Submit to City Attorney for review/signature

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

To be recorded by City Clerk:

Contract # \_\_\_\_\_

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

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

Comments:

[Large empty rectangular box for comments]

**CITY OF SANTA FE  
AMENDMENT No. 2 TO  
CONSTRUCTION AGREEMENT**

AMENDMENT No. 2 (the "Amendment") to the CITY OF SANTA FE CONSTRUCTION AGREEMENT, dated 7/31/13 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor, whichever occurs last.

**RECITALS**

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

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

1. COMPENSATION.

A. Article 4 paragraph 4.1 of the Agreement is amended to increase the amount of compensation by a total of eight hundred eleven thousand four hundred sixty three dollars and 74 (\$811,463.74) and the gross receipts tax (GRT) amount by a total of sixty six thousand four hundred thirty eight thousand and 59/100's (\$66,438.59), so that Article 4 paragraph 4.1 reads in its entirety as follows:

4.1 The Owner shall pay the Contractor in current funds for the performance of each Work Order at the fixed unit prices set forth in Exhibit I, subject to additions and

deductions by Change Order as provided in the Contract Documents, up to the Contract Sum of one million six hundred twenty two thousand nine hundred twenty seven dollars and 48/100's (\$1,622,927.48). The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the City immediately. The GRT amount of one hundred thirty two thousand eight hundred seventy seven and 18/100's (\$132,877.18) is 8.1875% of Base Bid and is being paid by the Owner to the Contractor so that the Contractor can pay the GRT to the New Mexico Taxation and Revenue Department (NMTRD). It is not compensation for services rendered. The Contractor agrees to timely remit this GRT to NMTRD.

2. TERM.

Article 2 of the Agreement is amended to extend the term of the Agreement, so that Article 2 reads in its entirety as follows:

This Agreement shall terminate on June 30, 2015.

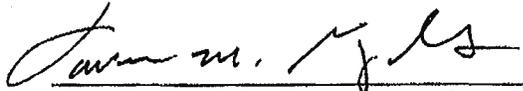
3. AGREEMENT IN FULL FORCE.

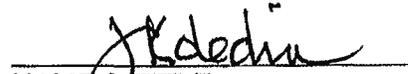
Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No.2 to the City of Santa Fe Construction Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:  
SUB SURFACE CONTRACTING

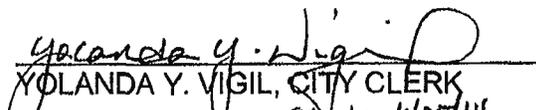
  
\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

  
\_\_\_\_\_  
NAME & TITLE

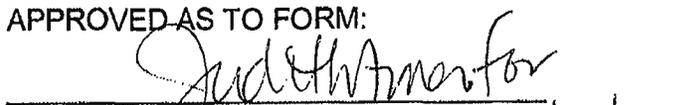
Date: 7/1/14

Date: 7/7/14

ATTEST:

  
\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK  
COUNTY 6/25/14

APPROVED AS TO FORM:

  
\_\_\_\_\_  
KELLEY BRENNAN,  
INTERIM CITY ATTORNEY 5/12/14

APPROVED:

  
\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR

52305.572970  
Business Unit/Line Item

ITEM # 14-0103

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

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

**RECITALS**

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

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

1. COMPENSATION.

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

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

Sum of eight hundred eleven thousand four hundred sixty three dollars and 74/100's (\$811,463.74). The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the Owner immediately. The GRT amount of sixty six thousand four hundred thirty eight dollars and 60/100's (\$66,438.60) is 8.1875% of Base Bid and is being paid by the Owner to the Contractor so that the Contractor can pay the GRT to the New Mexico Taxation and Revenue Department (NMTRD). It is not compensation for services rendered. The Contractor agrees to timely remit this GRT to NMTRD.

2. AGREEMENT IN FULL FORCE.

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

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

CITY OF SANTA FE:

CONTRACTOR:  
SUB SURFACE CONTRACTING

David Cozz  
DAVID COSS, MAYOR

J. Koledin V.P.  
Name & Title

Date: 3-6-14

Date: 3/17/14

ATTEST:

Yolanda Y. Vigil  
YOLANDA Y. VIGIL, CITY CLERK  
CCMG 2/26/14

APPROVED AS TO FORM:

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

APPROVED:

  
\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR 3/20/14

52305.572970  
Business Unit/Line Item

ITEM # 13-0768

AGREEMENT FORMS

(SECTION 00500)

CITY OF SANTA FE  
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN  
OWNER AND CONTRACTOR

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

For the following:

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

PROJECT NO.: CIP # 3044

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a Construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of July 31, 2013.

The OWNER and the CONTRACTOR agree:

ARTICLE 1  
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2  
THE WORK

The Contractor shall perform all the work required by the Contract Documents for FY 13/14 City-Wide Water Utility Construction & Repair Contract

The work designated as FY 13/14 City-Wide Water Utility Construction & Repair Contract consists of, but is not limited to construction and repair of water mains, valves, hydrants, metered water service lines and settings, pressure reducing valves, vaults, and other incidental work such as pavement removal and replacement, traffic control all as required to extend, replace or repair water distribution, water storage, and water supply infrastructure. The work consists of furnishing all equipment, labor and materials as required by the City of Santa Fe, New Mexico.

Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

ARTICLE 3  
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The work to be performed under this Contract may commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved no later than Three Hundred Twenty-Eight (328) calendar days after the date of written Notice to Proceed, and Final Completion shall be reached no later than Three Hundred Twenty-Eight (328) calendar days after the date of written Notice to proceed, except as hereafter extended by valid written Change Order by the Owner. The Term may be extended for three (3) additional twelve (12) month periods by the written agreement of the Parties amending this Contract.

ARTICLE 4  
CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the performance of each Work Order at the fixed unit prices set forth in Exhibit I, subject to additions and deductions by Change Order as provided in the Contract Documents, up to the Contract Sum of Four Hundred Thousand (\$400,000.00) dollars. The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the City immediately. The GRT amount of [\$32,750.00] is 8.1875% of Base Bid and is being paid by the Owner to the Contractor so that the Contractor can pay the GRT to the New Mexico Taxation and Revenue Department (NMTRD). It is not compensation for services rendered. The Contractor agrees to timely remit this GRT to NMTRD.

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

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

4.3 The Contract Sum is determined as follows:

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

ARTICLE 5  
PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and ninety five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to ninety eight percent (98%) of the Contract Sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6  
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time or any extension in the Contract thereof, the Contractor agrees to pay to the Owner the amount of Five Hundred dollars (\$500) per consecutive calendar days of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7  
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum if approved on a fully executed Work Order, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form),

Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

**ARTICLE 8 - Not Applicable**  
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Three Hundred Twenty-Eight (328) calendar day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract (See Article 4.10, Progress Schedules of Section 00700, General Conditions of the Contract).

**ARTICLE 9**  
GENERAL AND SPECIAL PROVISIONS

- 9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.
- 9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.
- 9.4 An enumeration of the Contractor's Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the aggregate maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.
- 9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.
- 9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.
- 9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement



- 9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 9.17 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.
- 9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.
- 9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 9.20 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
- 9.21 Entire Agreement. This Agreement represents the entire Contract between the parties and except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior conditions, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

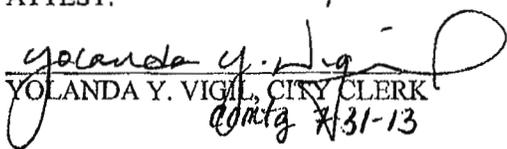
- 9.24 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.
- 9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

ARTICLE 10  
NEW MEXICO TORT CLAIMS ACT

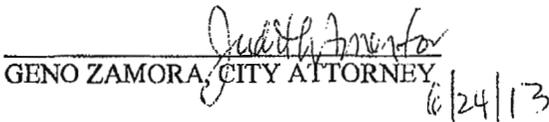
Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive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

This Agreement is entered into as of the day and year first written above.

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK  
Contract # 31-13

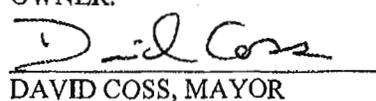
APPROVED AS TO FORM:

  
GENO ZAMORA, CITY ATTORNEY  
6/24/13

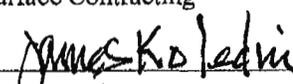
APPROVED:

  
MARCOS A. TAPIA, DIRECTOR  
FINANCE DEPARTMENT

OWNER:

  
DAVID COSS, MAYOR  
8-2-13  
DATE

CONTRACTOR:

Sub Surface Contracting  
BY:   
TITLE: Y-P  
DATE: 8-8-13

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

CITY OF SANTA FE BUSINESS REG.  
NO. Pending



City Of Santa Fe  
PO BOX 909  
Santa Fe NM, 87504

# City of Santa Fe, New Mexico BUSINESS LICENSE

Official Document  
Please Post

Business Name: SUB SURFACE CONTRACTING INC.

Location: 27 PASEO DE RIVER A ANNX2

Class: CONTRACTOR - SPECIALTY

Comment:

Control Number: 0008616

License Number: 13-00046991

Issue Date January 11, 2013

Expiration Date December 31, 2013

SUB SURFACE CONTRACTING INC.  
27 A PASEO DE RIVER

SANTA FE NM 87507

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO OTHER BUSINESSES OR PREMISES.

Client#: 34663

SUBSURFA

**ACORD**<sup>TM</sup>**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

7/08/2013

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> <b>HUB International Ins Svcs Inc</b> <b>PO Box 5080</b> <b>Santa Fe, NM 87502</b> <b>505 982-4296 / CA Lic# 0757776</b>	<b>CONTACT NAME:</b> Michelle Lovato <b>PHONE (A/C, No, Ext):</b> 505-992-1873 <b>FAX (A/C, No):</b> 866-621-0427 <b>E-MAIL ADDRESS:</b> michelle.lovato@hubinternational.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Depositors Insurance Company</td> <td>42587</td> </tr> <tr> <td>INSURER B: AMCO Insurance Company</td> <td>19100</td> </tr> <tr> <td>INSURER C: Builders Trust of New Mexico</td> <td>999999</td> </tr> <tr> <td>INSURER D: ALLIED P &amp; C Ins Co</td> <td>42579</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Depositors Insurance Company	42587	INSURER B: AMCO Insurance Company	19100	INSURER C: Builders Trust of New Mexico	999999	INSURER D: ALLIED P & C Ins Co	42579	INSURER E:		INSURER F:
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**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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>PD Ded:500</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC			ACPGLD07225085404	07/01/2013	07/01/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
D	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			ACPBAPC7225085404	07/01/2013	07/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0			ACPCAA7225085404	07/01/2013	07/01/2014	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	692	01/01/2013	01/01/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 City of Santa Fe, Public Utilities Department is included additional insured with respects to general liability per form CG7288 1111. Worker's Compensation coverage is evidence only.

**CERTIFICATE HOLDER****CANCELLATION**

<b>City of Santa Fe</b> <b>Public Utilities Department</b> <b>Attn: Maya Martinez</b> <b>801 West San Mateo</b> <b>Santa Fe, NM 87505</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 <i>Robert A. Mackowski</i>
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