

## **CITY OF SANTA FE**

### **REQUEST FOR PROPOSALS FOR AN ADVANCED METERING INFRASTRUCTURE SYSTEM AND RELATED INSTALLATION AND IMPLEMENTATION SERVICES**

**RFP No. 14/14/P**

#### **Proposal Release Date**

November 20, 2013

#### **Proposal Submittal Due Date**

January 10, 2014

**To:**

Shirley Rodriguez  
City of Santa Fe  
1651 Siringo Road, Building H  
Santa Fe, NM 87505  
sarodriguez@ci.santa-fe.nm.us  
(505) 955-5711

**REQUEST FOR PROPOSALS****RFP No. 14/14/P**

The City of Santa Fe invites qualified firms to submit proposals to provide an Advanced Metering Infrastructure (AMI) based upon the requirements and scope of work contained in the Request for Proposal. The intent is to select one firm to provide the software and services.

Sealed Proposals, in writing, will be received by Shirley Rodriguez, Procurement Analyst, City of Santa Fe City Hall, Siringo Road Building H Santa Fe, New Mexico 87505, until January 10, 2014 at 2:00 PM local time. Facsimile or electronically transmitted proposals will not be accepted. Late proposals will be **retained unopened**.

The complete Request for Proposal is on file with and may be obtained from Shirley Rodriguez, Procurement Analyst, City of Santa Fe at sarodriguez@ci.santa-fe.nm.us. Information about the Request for Proposal can also be found at the City's website, [www.santafenm.gov](http://www.santafenm.gov) under the "Business" link.

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## **PART I**

### **GENERAL INFORMATION AND PROJECT BACKGROUND**

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#### **1. INTRODUCTION**

The City of Santa Fe (City) invites proposals from qualified vendors that possess outstanding qualifications, experience and knowledge to provide a fully integrated Advanced Metering Infrastructure (AMI). The selected vendor must be able to furnish all water meters, registers and transmitter units. The specific services and products requested in this Request for Proposal (RFP) are detailed in Part II.

#### **2. CITY BACKGROUND**

City of Santa Fe is known as the “City Different” and the oldest capital in the United States. Santa Fe is over 400 years old and located in central Northern New Mexico at an elevation of 7,000 ft. Santa Fe embodies a rich history, melding Hispanic, Anglo and Native American cultures whose influences are apparent in everything from architecture, food, and art. The City is the fourth largest city in New Mexico with a population of approximately 68,000; staff of +/- 1466 FTE’s; an operating budget of approximately \$239 million and a capital budget of approximately \$42.9 million.

The City delivers water to approximately 36,000 water services throughout a service area of approximately 37.45 square miles. The City serves approximately 32,000 metered residential accounts. The majority of service lines are 3/4 inch in diameter and a majority of the meters are 5/8 inch.

#### **3. METER INFORMATION**

The City currently purchases four different makes of meters – Badger, Neptune, Sensus and Rockwell. Sizes range from 5/8” to 10”. Each meter is assigned a 5-digit asset number, which begin with the number 99 and followed by five additional digits. Exceptions to this rule are compound meters, which use six additional digits with a “1” or a “2” at the end of the sequence that represent the dial from which the read is coming. Meters may measure consumption in hundreds, thousands, or even tens of thousands of gallons.

There are 4 billing cycles, 20 routes and 104 sub-routes.

Meters are read weekly from Monday through Friday as the City tries to avoid reading meters on weekends.

The billing cycles are organized and read as follows:

- Bill Cycle 1 – has 4 read routes.
- Bill Cycle 2 – has 5 read routes

- Bill Cycle 3 – has 5 read routes.  
Bill Cycle 4 – has 6 read routes.

**4. PROJECT BACKGROUND**

The City’s current AMR system is no longer being supported by the vendor. This situation, combined with the City’s desire to reduce costs, increase efficiency and reduce their carbon footprint has led them to pursue a new AMI system that will help the City meet these objectives.

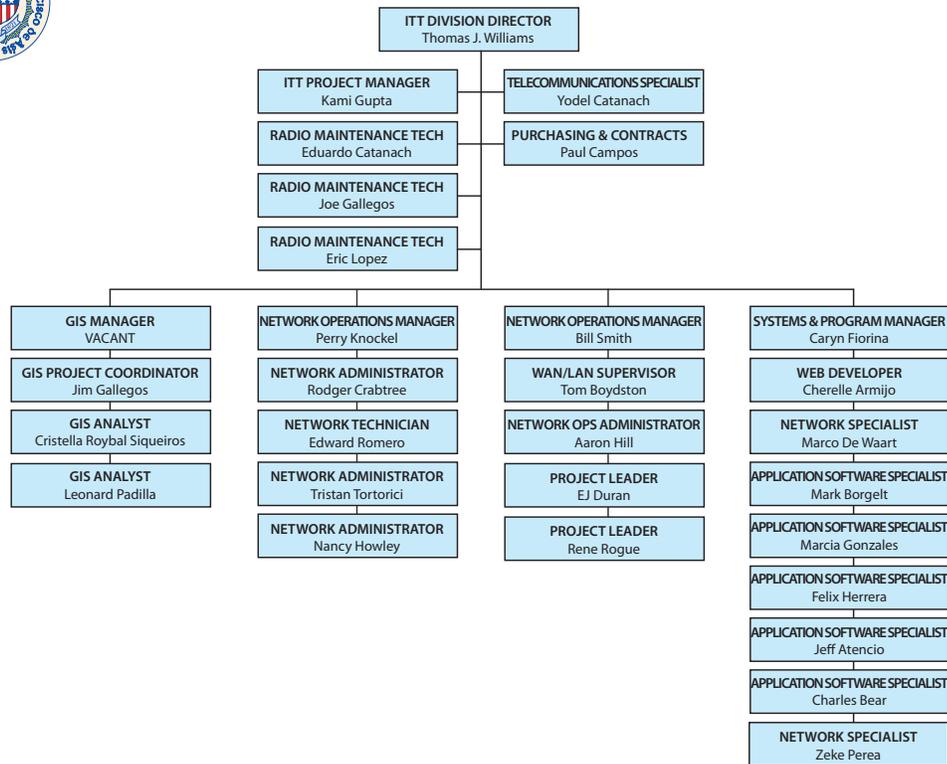
The City has recently selected a new Utility Billing solution, Advanced Utility Systems’ Infinity suite of applications. As a follow up to this technology improvement project, it has engaged the services of Schafer Consulting to determine the requirements and to assist with the evaluation and selection of a new AMI solution.

**5. THE INFORMATION TECHNOLOGY DEPARTMENT ORGANIZATION CHART & STANDARDS**

The Information Technology Department reports to the City Manager and consists of 30 staff members.



**INFORMATION TECHNOLOGY & TELECOMMUNICATIONS**



## IT Standards

The most important City standards are the database platforms, operating system (OS) platforms, server, desktop, notebook computer, and core network infrastructure hardware. Together, these elements form the foundation of the City's computing infrastructure upon which the majority of the City's business systems are constructed and deployed. The city maintains a fairly typical infrastructure utilizing many different components but standardizing on Windows 7 Enterprise 64 bit and MS Office 2010 Professional Plus 64 bit at the desktop. We use Active Directory to manage accounts and resources and are currently open to virtualization.

## 6. TRANSACTIONAL VOLUME STATISTICS

The following table highlights the utilities transactional volume statistics:

Type of Transaction/Record	Volume
Active Customers	40,000
Active Accounts	33,000 water accounts 28,000 refuse accounts 33,000 sewer accounts.
Meters	37,000
Adjustments per year	54,900
Payments per year	411,498
Bills per year	445,105
Refunds per year	4,000

## 7. FREQUENCY LICENSES

The City is open to use either licensed or non-licensed frequencies and would like to entertain opinions from the selected vendor.

## 8. PROJECT TIMELINE

For planning purposes, the City has stated a desire to implement via a phased approach with a total implementation timeframe spanning approximately 3-4 years for the successful completion of activities. The vendor is requested to assess and confirm this timeframe or suggest other optimum timelines that more readily support the vendor's proposed solution and associated resource requirements. See Part II – Scope of Work for further details.

**9. POINTS OF CONTACT**

Vendors shall submit all correspondence with the Purchasing Office to:

Shirley Rodriguez  
City of Santa Fe  
2651 Siringo Road Building H  
Santa Fe, New Mexico 87505  
sarodriguez@ci.santa-fe.nm.us  
(505) 955-5711

The Project Manager from the City for this project is Richard Chavez, Meter Reading Supervisor. He may be contacted at [rachavez@ci.santa-fe.nm.us](mailto:rachavez@ci.santa-fe.nm.us) for questions regarding the content and purpose of this project.

## PART II

### PRODUCT REQUIREMENTS & SCOPE OF WORK

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#### 1. PROJECT GOALS

The City of Santa Fe is committed to developing a sustainable community and reducing its carbon footprint by increasing its meter reading efficiency. To this end, the City is implementing an AMI project that will allow it to capture more water usage data for purposes of analyzing customer demand and supporting conservation activities.

#### 2. PRODUCT REQUIREMENTS

The City has prepared a list of requirements for the fixed network AMI system. The City intends to procure the best designed and operating fixed network AMI system to meet its long-term needs. The City is solely responsible for making judgments about the products and services being offered and whether they meet the intent of the project.

Vendors are encouraged to include any charts, graphs or illustrations that would help communicate the information requested.

The proposed solution must:

- Equip all water meters, registers and transmitter units with an AMI system that will enable it to obtain timely and accurate consumption readings
- Incorporate fixed radio network technology with the option to have a hybrid system (i.e.: a mix of AMR and AMI)
- Interface with Advanced Utility Systems CIS solution (Infinity) to transfer data and provide notification information
- Be compatible with at least three (3) other meter brands
- Be capable of two-way communication
- Registers that are absolute encode type but support current pulse meters
- Transmit consumption readings on an hourly basis with a battery life of at least 20 years
- Read “on-demand”
- Achieve a minimum transmission rate of 99.5% of readings
- Ensure accurate data transmission, security and immunity from outside interference as well as signal degeneration to prevent accidental loss, interception of or tampering of customer or meter reading data
- Ensure the system contains tamper detection capabilities which, when the meter, transmitter or any wiring between components has been tampered with must cause a tamper message to be indicated when the transmitter sends its data
- Provide leak detection notifications that can be configured at the individual meter level.

- Provide other detection and/or status and trend monitoring capabilities - such as backflow detection, register malfunctioning detection (under registration, over registration, no registration, etc.) - Trend analysis capabilities should provide sufficient information to allow users to develop policies to promote water conservation, battery power levels (replacement predictions), signal-to-noise performance of transmissions, etc.
- Enable the AMI system to replace the routine reading and physical inspection of meters
- Contain a unique ID number that is transmitted with meter readings. Address whether or not the meter register ID is also transmitted with the meter readings and whether one transmitter can service two or more meters (what is the max number of meters tied to one transmitter?)
- Contain programmable options, features and procedures
- Operate in conditions subject to water submergence and heat
- Be permanently labeled with the manufacturer's name, model number, tamper wiring, transmitter identification number, required FCC labeling, input/output connections and date of manufacture. Label should include a bar code of the transmitter serial number.
- Provide data to the UB system. At a minimum, each record should contain the site number, transmitter ID number and/or port number, meter number, meter readings, error codes or flags, date and time for each meter reading, unable-to-read code and tamper indications.
- Interface with GIS to allow for specific location information for the meter, transmitter and all other components
- Provide statistical reports on the usage of the product. It must incorporate detailed incident reporting and logging features including trend analysis.
- Provide complete online, real time record creation, maintenance, reporting and retention
- Allow for successful installation verification from the field to avoid return trips to the transmitter/meter
- Provide 1-hour reading intervals
- Provide user request reads on demand at any given point in time
- Remotely shut off a meter based on a signal that indicates a leak
- Include all software updates as part of the SSMA
- Replace parts of a meter rather than having to replace the entire meter
- Provide data access to constituents via phone, computer and tablet
- Equipped with a redundancy server in case of a server failure
- Allow for handheld devices in the field
- Update data in the field which is sent real time to the database
- Verify GPS coordinates of the meters and other components
- Include proposed handheld devices with the ability to read barcodes
- Provide robust reporting options along with the ability to use business analytics
- Provide scheduling capabilities for the data collectors
- Must not contain any lead content

The City would like the meter mechanical parts and/or exterior components to have a minimum of a 10-year warranty.

### 3. **EQUIPMENT NEEDS**

The following table highlights the equipment needs for the City.

Equipment Description	Quantity Required
5/8" water meters and registers	30,747
3/4" water meters and registers	142
1" water meters and registers	1,641
Handheld installation units	8 to 10

The City's current meters are equipped with both plastic and metal lids. A few of them are concrete and cast iron. 3" and 8" meters are tested for accuracy on an annual basis. The vendor response should include a description of the physical characteristics of the transmitter, including the height, length, width and weight. Please describe the transmitter installation options and whether or not any portion of the transmitter must penetrate the meter lid box.

### 4. **SCOPE OF WORK**

The work involved under the terms of the contract with the vendor shall be full and complete execution of the items noted below, and as described in other parts of this RFP:

- Furnishing and installation of fixed network AMI system data collection units, including required support structures and electrical power, capable of capturing signals from radio Transmitter Units (TUs).
- Furnish and install the communication or data transfer system capable of transferring data from the data collection units (DCUs) to a computer located at the City.
- Provide, license and assist with the installation of the software necessary to operate the system and communicate meter reading data to the City's customer information and billing systems.
- Provide technical and IT installation support to the City during AMI system development.
- Obtain all Federal, State and local permits and licenses required for the installation and operation of the AMI system.

- Provide multiple warranty options for the City to choose from.
- Provide a propagation study in order to determine the number and placement of DCUs. Yearly power costs for the proposed DCUs should be included.
- Provide a System Map and all System operating information
- Obtain on behalf of the City all radio licenses necessary to operate the AMI system on frequencies that will be sufficiently free of noise and interferences so as to provide all proposed capabilities over the life of the proposed system
- Perform interface to the new Utility Billing system. The AMI must automatically provide data, corresponding to all the accounts in a billing cycle, meter reading cycle of other grouping presented to it.
- Provide documentation adequately describing the operation and maintenance of the AMI system and its components for use by City employees or agents.
- Provide any third party software manuals whose components are incorporated into the AMI system.
- Provide training to all appropriate staff sufficient to enable them to effectively operate and maintain the system. To be effective, the City requires training curriculum be provided in advance, that training be accompanied by course workbooks and materials, that training be provided by experienced instructors, and that all training be accompanied by tests of hands-on evaluation to ensure City employees or agents have absorbed the content of the training.
- Provide on-site and telephone support as needed by the City and should include the following:
  1. FCC license protection and maintenance
  2. Telephone support
  3. All software updates
  4. Equipment loaner program
  5. Remote diagnostics
  6. Repair or replacement of defective parts
- Provide a dedicated Project Manager for the entire duration of the project. The City reserves the right to pre-approve the assigned Project Manager.

Furthermore, vendor cannot replace its assigned Project Manager without prior approval from the City. The City's project team will work with the vendor's Project Manager to coordinate all project activities. All communications between the City and the vendor shall be coordinated through their respective Project Managers.

At a minimum, the vendor's Project Manager shall be responsible for:

1. Directing the Project as the vendor contact with responsibility for Project performance from initiation to closure, including planning, organizing, managing and controlling all aspects of the Project to ensure that tasks are performed according to the approved schedule and plan.
  2. Providing periodic updates to the Project Implementation Plan and Schedule. Minor changes to the plan are subject to approval by the City's Project Manager. Major changes must be approved in a written change order to the Contract.
  3. Providing consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches and operational concerns/issues.
  4. Submitting weekly Status Reports that highlight tasks which may have fallen behind schedule, reasons for any delays and projected completion dates. Status report must also identify all risks and problems which may affect the Project, identify the owner of the problem, and the impact it may have on the project plan.
  5. Taking part in status and communication meetings
  6. Working with the City's Project Management Team to prepare agendas for project status meetings that highlight current and near term tasks and pending/new risks and problems.
  7. Identifying personnel, equipment, facilities and resources that will be required to perform services by the vendor.
  8. Leading the project team to identify, manage, and address issues that arise throughout the course of the implementation
  9. Communicating and coordinating the activities of the vendor's staff and resources. Identify all known items that may impact the availability of resources during the project.
  10. Working with the City's Project Management Team to ensure that the project stays on-track and within the established budget.
  11. Ensuring that adequate quality assurance procedures are in place throughout the project and that the system complies with the specifications and requirements.
  12. Identifying and providing immediate notice of all issues that may threaten the implementation, operation or performance of the system.
- Provide a detailed deployment plan.
  - Provide quality control policies and procedures to ensure quality system design, manufacturing, component sourcing and any other aspect that affect

the serviceability and useful life of the equipment and software that will be furnished to the project. Also need the failure analysis process that is used when product is returned.

- Provide pre and post go live support

## **PART III**

### **RFP GUIDELINES, SCHEDULE AND SPECIAL CONDITIONS**

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#### **1. ADMINISTRATIVE REQUIREMENTS**

- The City requires a fixed fee for the Annual Maintenance Agreement and will want vendors to provide their opinions on licensed and non-licensed frequencies for their Software and Services Contract. The vendor is expected to design, supply, install, configure, test and commission a system that fully complies with the specifications and requirements and the statement of work for the negotiated price. The City requires a lump sum “not-to-exceed” amount for the service portion of the project and a time and material payments schedule for additional work not covered under proposed scope of work.
- Vendor should invoice the City for services based on mutually agreed upon milestones.
- The City will retain 20% from each milestone payment, and will not be released until all work has been deemed satisfactory. The proposed system shall be defined to be finally accepted by the City after the installation of the equipment, training, and successful completion of the following performance examinations: system equipment examination, software performance examination, system functional competence examination, system capacity examination, full-load processing capacity examination, system availability examination, approval of as-built, training, and system documentation. The City and its consultants shall be the sole judge of whether all conditions for Final Acceptance criteria have been met.
- The vendor must agree that solutions prescribed in their proposal response will remain available and supported for a minimum of five (5) years from the time the contract is signed and that any material changes to vendor’s company or products will not affect the City’s implementation or support.
- All proposals must be signed with the vendor’s name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- The City may cancel, delay, or suspend this solicitation if in the best interest of the City as determined by the City.

#### **2. WRITTEN CLARIFICATIONS**

The City will accept written questions to clarify any aspects of this RFP or the project on or before December 17, 2013. Please e-mail questions to Shirley Rodriguez, sarodriguez@ci.santa-fe.nm.us. Responses to the written questions will be released on December 23, 2013.

#### **3. SUBMISSION OF PROPOSAL**

Two (2) electronic copy on disc, one (1) easily reproducible original and six (6) copies of the proposal must be delivered to Shirley Rodriguez, Procurement

Analyst, City of Santa Fe City Hall, Siringo Road, Building H, Santa Fe, New Mexico 87505, by January 10, 2014, 2:00 PM local prevailing time.

No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on “overnight delivery” without including some lead-time. “Overnight delivery” will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days to included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 PM to 1:00 PM.

The outside of the envelope should clearly indicate the following information:

- Proposal number
- Title of the proposal
- Name and address of the proposer

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

1. The electronic copies should include the entire RFP response and should be submitted on either CD-ROM or DVD utilizing Microsoft Office (e.g. Word, Excel, Project), version 2010 or later. Electronic versions must include the complete proposal, along with the cost proposal, references, vendor profile questionnaire, appendices, etc.
2. The proposal should be limited to minimum font size of 12 and must be printed double-sided. Each section, as defined in Part V, should be separated by a tab divider.
3. Responses to cost must be completed using the templates provided by the City, which is attached to this document.
4. Information must be furnished complete, in compliance with the terms, conditions, provisions and specifications of the Request for Proposals. The information requested and the manners of submission are essential to permit prompt evaluation of all proposals on a fair and uniform basis. The response must follow the RFP Response Outline provided in Part V.
5. Please submit/forward all questions and matters relating to this RFP through e-mail or phone to the contact listed on the cover page of the RFP.
6. A **pre-bid conference** will be held at 10:00 AM Mountain Standard Time, December 5, 2013, at 2651 Siringo Road, Building E, Santa Fe, New Mexico 87505. Teleconferencing will be provided for those who wish to participate via telephone. The pre-bid conference is not mandatory, but interested vendors are strongly encouraged to attend.

**4. PROPOSAL POSTPONEMENT, ADDENDUM AND CANCELLATION**

The City reserves the right to revise or amend the specifications or any other part of the proposal up to the time set for opening. All changes, additions, and/or clarifications in connection with this proposal will be issued by the Purchasing Department in the form of a written addendum.

This request for proposal may be cancelled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretations should be in writing addressed to, Purchasing Analyst, 2651 Siringo Road, Bldg. "H" Santa Fe, New Mexico, 87505 and to be given consideration must be received at least seven (7) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

**5. VENDOR COST TO DEVELOP PROPOSAL**

All costs for preparing and submitting proposals, including travel, software demonstrations and labor in response to this RFP are to be the responsibility of the vendor and will not be chargeable in any manner to the City.

**6. COMPLIANCE WITH RULES**

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as thought herein written out in full.

**7. AWARD**

The proposal is to be awarded based on qualified proposals as per the Evaluation Process stated in Part IV of the RFP and at the discretion and consideration of the governing body of the City of Santa Fe. At its discretion, the city reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed. The City also reserves the right to:

- (a) Reject any and all proposals, to waive any informality or irregularities in the proposals, and to accept the proposal that appears to be in the best interest of the City.
- (b) Negotiate modified proposals in the event it rejects one or more components of the software/services from any original proposal.
- (c) Conduct a Best and Final Offer with the selected vendor.

The final contract will include a copy of the vendor's proposal, including responses to the requirements matrices, and require that the successful vendor's products (software, hardware and services) are compliant with those responses. Proposal should include a statement indicating the vendor's willingness/ability to accept this contractual requirement. If vendor is not willing to do so, proposal should explain why vendor takes exception.

**8. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)**

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

**9. LOCAL PREFERENCE*****INTENT AND POLICY***

The city recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The city also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by

maintaining businesses and other facilities within the county and giving employment to residents of the county.

### ***APPLICATION FOR LOCAL PREFERENCE***

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The preference for proposals shall be 1.10 for local.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department

with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case-by-case basis if it is the City's best interest to do so.

#### **10. NEW MEXICO RESIDENT VETERAN BUSINESS PREFERENCE**

New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business". Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached to the RFP.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference stated above is not cumulative with the resident veteran business preference.

#### **11. PROTEST AND RESOLUTIONS PROCEDURES**

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

#### **12. PURCHASING CODE OF ETHICS**

The Purchasing Division and its employees, in accord with professional principles, will:

- a) serve under these principles to the advantage of the City of Santa Fe;
- b) acknowledge the dignity and worth of the services rendered to the City and the social responsibilities assumed as a trusted public servant;
- c) be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the City and the public being served;
- d) acknowledge that personal aggrandizement or personal profit obtained through the misuse of public or personal relationships is dishonest and not tolerable and may be subject to civil or criminal penalties;

- e) identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved;
- f) acknowledge that the Purchasing Division staff should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities, entertainment or other things of value from a vendor (other than of minimal value, i.e., less than \$50 on an annual basis;)
- g) keep the City administration informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts, but personally remain in the background;
- h) resist encroachment on control of personnel in order to preserve integrity as a professional and handle all personnel matters on a merit basis to ensure appropriate qualifications are possessed to meet position requirements. Political, religious, racial, ethnic, gender and age considerations shall not be considered in personnel administration of the Purchasing Division;
- i) not seek or dispense personal favors and handle each administration problem objectively and empathetically on the basis of principles and justice without discrimination; and
- j) subscribe to and support the professional aims and objectives of the recognized purchasing institutions and associations.

### 13. ESTIMATED PROCUREMENT SCHEDULE

<b>RFP Schedule</b>	
RFP Issue Date	November 20, 2013
Pre-bid Conference	December 5, 2013
Final Date for Vendors to Request Clarifications to RFP	December 17, 2013
City Response to Requested RFP Clarifications Published	December 23, 2013
Proposals Due from Participating Vendors	January 10, 2014
Anticipated Competitive Range (Short List) Selection	January 17, 2014
Anticipated Finalist Selection – Notice of Intent to Award (NOI)	February 21, 2014
Public Utility Committee Recommendation Approval	April 2, 2014
Council Approval	April 9, 2014
Contract Finalized	March 7, 2014
Finance Committee Approval	March 31, 2014
Project Kickoff	April 28, 2014

**14. OTHER SPECIAL CONDITIONS*****GENERAL***

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

***ASSIGNMENT***

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

***VARIATION IN SCOPE OF WORK***

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

***DISCOUNTS***

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

***TAXES***

The City is exempt from payment of gross receipts tax on tangible goods and a using department should not include this tax in any payment. If such an amount is charged, the vendor should be informed that a Non-taxable Transaction Certificate may be issued upon receipt of a written request from the vendor. The City is liable for gross receipts tax on services and construction. The City is also liable for state excise tax on gasoline.

***INVOICING***

- (a) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

- (b) The vendor will review the invoice with the City's Project Manager and make corrections, prior to submission for payment. Invoices will be submitted to the Project Manger at the Utility Billing Division. Do not send invoices to the Purchasing Office.

### ***METHOD OF PAYMENT***

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

### ***DEFAULT***

The city reserves the right to cancel all or any part of this order without cost to the city if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

### ***NON-DISCRIMINATION***

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

### ***NON-COLLUSION***

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

## PART IV

### EVALUATION OF PROPOSALS

#### 1. EVALUATION OF PROPOSALS

The City shall evaluate Proposals to determine the Vendor submitting the best responsive Proposal for providing and implementing a new AMI System. The City reserves the right to seek written clarifications of each proposal submitted. The City also reserves the right to require other evidence of minimum qualifications, technical, managerial, financial and additional abilities prior to selection.

#### 2. EVALUATION PROCESS

The City will follow the steps below for selecting the responsible Vendor submitting the best responsive Proposal.

#### STEP ONE – FIRST REVIEW: PASS/FAIL.

A failure on any of the two criteria below may lead to elimination.

- (a) **Conformance with RFP Guidelines and Submittal Requirements –**  
The vendor must follow all RFP guidelines and submittal requirements, including the completion of required forms and templates.
- (b) **Vendor’s Ability/Willingness to Attach RFP Response to Final Contract –** The Vendor must be able/willing to attach its proposal, including responses to the requirements matrices, to the final contract. If not, vendor should include explanation as to why it takes exception to this contractual requirement.

#### STEP TWO – DETERMINATION OF COMPETITIVE RANGE/SHORT LIST

The City’s Selection Committee will evaluate proposals that were not eliminated in Step 1 according to the evaluation criteria described below. The result of this step of the process will be the identification of Vendors in the Competitive Range that will advance to the next step of the selection process.

Proposal Evaluation Criteria	
Description	Weight
<b>AMI System Capabilities</b>	20%
<b>Qualifications</b>	30%
<b>Approach</b>	20%
<b>Product Specifications</b>	20%
<b>Cost.</b> The City will evaluate Cost proposals on a ratio method. The lowest	10%

proposed cost will receive the maximum 10 points. The remaining cost proposals will be extrapolated based on highest and lowest bids.	
<b>TOTAL</b>	100%
<b>Local Preference.</b> Vendors that qualify and fill out a local certification form will be given an extra 10%. (New Mexico business gets extra 5%)	10%

**Clarifications.** In evaluating proposals, the City may seek information from a Vendor to clarify the Vendor's Proposal. A Vendor must submit written and signed clarifications and such clarifications shall become part of the Vendor's Proposal.

**Ranking Proposals.** After evaluation of all Proposals in accordance with the criteria set forth above, the City will rank all Vendors and identify the Competitive Range.

**Size of Competitive Range.** The anticipated size of the Competitive Range is three (3) but may be decreased at the City's discretion. The City may elect to increase the number of Vendors in the Competitive Range if the evaluation of Proposals establishes a natural break in the scores of Vendors indicating a number of Vendors greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Vendor.

### STEP THREE – DISCUSSIONS

At the completion of Step Two, the City may elect to conduct oral or written discussions with all the vendors in the competitive range with respect to all of the provisions of the RFP.

The discussions with vendors in the competitive range are for the purpose of:

- Interviewing vendors
- Informing vendors of deficiencies in their initial proposal
- Notifying vendors of parts of their proposal for which the City would like additional information, and
- Otherwise allow vendors to develop revised proposals that will allow the City to obtain the best proposal based on the requirements and evaluation criteria set forth in the RFP

The City may conduct discussions with each vendor in the competitive range necessary to fulfill the purposes describe above.

The vendors in the competitive range must develop a Detailed Implementation Plan to include the following:

- Deployment Plan – Provide a Gantt Chart which outlines the proposed scheduling and implementation plan.
- Installation of meters and other equipment – Provide a detailed description of the procedures that will be used to install each meter and equipment. Include how the public will be notified. Also include what data will be collected and how that data will get transferred to the new data server.
- Validation of Data Collection and Billing Processing – Provide a detailed description of how validation of data will occur.
- Phasing “Going Live” by Route – Discuss the proposed routing of the installation of meters and when each meter will “go live”. Also discuss how many meters will be installed per day.
- Other Deployment Information – Discuss any additional implementation concerns that the vendor may have as well as a proposed solution for each concern.

#### **STEP FOUR – SITE VISIT**

Upon completion of Step Three, the City may elect to conduct site visits or phone interviews with any or all of the references submitted within the proposal of the vendor identified in the competitive range.

The purpose of the site visits/interviews is to determine the following:

- The overall quality of the system
- Experience with the vendor
- Cost/Schedule performance

#### **STEP FIVE – FINAL EVALUATION AND INTENT TO AWARD**

The City will select the finalist by evaluating the results of the discussion, the quality of the implementation plan and the outcome of the site visits/interviews.

After the final selection, the City shall provide written notice to all Vendors in the Competitive Range of the City’s intent to Award the Contract to the highest ranked Vendor.

The judgment used in the scoring by individual evaluators is not grounds for appeal. No protest because of a solicitation provision, evaluation criteria, scope of work, or specification that could have been raised as a solicitation protest will be considered.

## STEP SIX -- CONTRACT NEGOTIATIONS AND EXECUTION

After the protest period for the Intent to Award has expired, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations.

**Contract.** The Contract will define the extent of services, goods, and public improvements to be rendered, method and amount of compensation. The City reserves the right to negotiate a final contract that is in the best interest of the City.

**Contract Negotiations.** The City will be using contract template provided in Part VII. In addition, Vendor shall, as part of its proposal, submit its Standard Software License Agreement, Standard Support/Maintenance Agreement, and Standard Professional Services Agreement, as discussed in Part V. The final Contract(s) shall be negotiated based on these standard forms. Contract terms that may be negotiated consist of the Statement of Work including the details of contract performance, methods of construction, timing, assignment of risk in specified areas, the Contract Price as it is affected by negotiating the statement of Work, and other matters that affect cost or quality or are reasonably related to those expressly authorized for negotiation.

**Terminating Negotiations.** At any time during negotiations, the City may terminate discussions or negotiations with the highest-ranked Vendor, or the Vendor with whom it is currently discussing or negotiating, if the City reasonably believes that:

- (a) The Vendor is not discussing or negotiating in good faith; or
- (b) Further discussions or negotiations with the Vendor will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

**Continuing Negotiations.** If the City terminates discussions or negotiations with a Vendor, the City may then commence negotiations with the next highest scoring Vendor in the Competitive Range, and continue the process rule until the City has either determined to Award the Contract to the Vendor with whom it is currently negotiating.

**Contract Award.** Once contract terms are acceptable to the City, the City shall award the contract to the selected Vendor. The selected Vendor shall be required to sign a Contract with the City incorporating all the legal requirements and other provisions defined in this Request for Proposal. The Contract shall be the governing document for the project.

**Contract Execution.** It is anticipated that the successful Vendor will enter into a contract with the City by March 31, 2014. The Contract will not be signed by the City until:

- (a) All insurance required by the Contract has been obtained and Certificate(s) of Insurance have been provided to and approved by the City.
- (b) The separate Performance and Payment Bonds required by the Contract have been obtained and the Bonds have been provided to and approved by the City.

Failure on the part of the successful Vendor to execute the Contract and to deliver the Contract, the required performance and payment bonds and the certificate of insurance shall be just cause for cancellation of the award, withdrawing of the Contract and forfeiture of the Proposal Security to the City. Award may then be made to the next lowest responsible and responsive Vendor, or the work may be re-advertised, or otherwise, as the City may decide.

## PART V

### RFP RESPONSE REQUIREMENTS AND FORMAT

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content and cost effectiveness of the proposal.

Proposals shall be easily recyclable; plastic and wire bindings are discouraged. The pages contained in the proposal shall be consecutively numbered.

Please use the following format to structure your RFP response. Your response should include each section detailed below in the order presented and must be separated by tabs. The detail represents the items that are to be covered in each section of your response. Failure to address all items will impact the evaluation and may classify the response as non-responsive and preclude it from further consideration. Please refer to Part II – Scope of Work for additional information.

Section	Title
	Title Page
	Letter of Transmittal for Request for Proposal
	Table of Contents
1.0	Executive Summary
2.0	AMI System Capabilities
3.0	Qualifications
4.0	Approach
5.0	Product Specifications
6.0	Cost
7.0	Required Documents/Appendices:
	a. Pricing Sheet-Appendix A
	b. References-Appendix B
	c. Vendor Profile Questionnaire-Appendix C
	d. Resume of Key Personnel-Appendix D
	e. Key Outside Consultants-Appendix E
	f. Local Preference Certification Form -Appendix F

#### 1. TITLE PAGE

The title page should include, at minimum, the following:

- (a) Name of Project – An Advanced Metering Infrastructure System and Related Installation and Implementation Services
- (b) Submitted by – Company Name
- (c) Date of Submittal

## **2. LETTER OF TRANSMITTAL FOR REQUEST FOR PROPOSAL**

All proposals must include a transmittal letter addressed to the contact person on the cover page of this RFP and signed by a duly constituted official legally authorized to bind the proposer to both its proposal and cost. Furthermore, the transmittal letter must:

- (a) Indicate the intention of the vendor to adhere to the provisions described in the RFP without modification;
- (b) Identify the submitting organization;
- (c) Identify the contact person responsible for this response, specifying name, title, mailing address, phone and email address;
- (d) Provide acknowledgement that the proposal submitted, including responses to the Requirements worksheets, will be included as part of the contract terms, and identify exceptions or "deal breakers";
- (e) Explicitly indicate acceptance of the City's 20% retention requirement for services rendered;
- (f) Acknowledge the proposal is considered firm for ninety (90) days after the due date for receipt of proposals or receipt of the last best and final offer submitted;
- (g) Acknowledge completion of the Pricing Worksheets

## **3. TABLE OF CONTENTS**

The table of contents should outline Sections 1.0 thru 7.0, as described previously in this section.

## **4. SECTION 1.0 - EXECUTIVE SUMMARY**

Vendors should provide a narrative summary to include the following:

- Brief understanding of the scope of the project.
- Company profile that includes discussions of the financial strength, stability, and capacity of the vendor.

## **5. SECTION 2.0 – AMI SYSTEM CAPABILITIES**

Vendors should explain their system's capabilities, including

- Provide a general description of the overall capability of the proposed AMI system

- Describe the flexibility of the system and its adaptability to other systems and future technologies
- Identify challenges that the proposed system may/will have with the City's topography, size and technical environment, both during installation and during the operation phase.

**6. SECTION 3.0 – QUALIFICATIONS**

In this section, vendors should:

- Describe how long the vendor has been in business
- Provide a minimum of five (5) references regarding projects similar in size and scope completed by the vendor. Identify the number of meters and year(s) installed.
- Provide evidence of past cost performance and ability to meet project schedules
- Describe experience of proposed Project Manager and other key staff.
- Describe the ability of the vendor to meet City bonding and insurance requirements.

**7. SECTION 4.0 – APPROACH**

In this section, vendors should:

- Provide the vendor's approach to the project.
- Provide a detailed description of the training provided to City staff
- Describe the number and skill set of anticipated staffing, both vendor and City staff, required for successful implementation. Also include the anticipated hours for each individual.
- Describe project management systems and procedures to ensure project is completed on time and within budget

**8. SECTION 5.0 – PRODUCT SPECIFICATIONS**

Under this section, vendors should respond to each section of the product specifications set forth in Part II, Product Requirements & Scope of Work.

At a minimum, discussions should include:

- Modes of operation
- Interface to billing system
- Updating of account data
- Recovery and restart procedures
- User access
- Meter reading database
- Capacity

- Back up
- User Interface
- Reports
- Traps for questionable readings
- Meter reading system performance assessment and diagnostic tools
- Software documentation
- Software license and warranty
- Software maintenance
- Third party software
- Interface with GIS

**9. SECTION 6.0 – COST**

The Pricing Worksheet provided by the City, which includes cost of equipment, software, services (i.e.: installation, configuration, testing, training, project management, etc.), must be utilized. If vendor wishes to provide additional cost information, please include it as supplemental schedules that support the Pricing Sheet. Section 6.0 – Required Documents/Appendices

**10. SECTION 7.0 – REQUIRED DOCUMENTS/APPENDICES**

Under this section, vendors shall complete and submit Appendices A, B, C, D, E and F. Please note that Appendix A does not need to be submitted in hard copy format as it is only required to be submitted in electronic format on disc along with the proposal response.

Appendices A thru F are provided as part of this RFP.

- a. Appendix A – Pricing Sheet
- b. Appendix B – Client References
- c. Appendix C – Vendor Profile Questionnaire
- d. Appendix D – Resume of Key Personnel
- e. Appendix E – Key Outside Consultants
- f. Appendix F – Local Preference Certification Form

Instructions on how to fill out Appendices A - F are provided below.

**a. Cost Proposal (Appendix A)**

Pricing is an important aspect of the overall evaluation of the vendor's response. Included in Appendix A of this RFP are the 5 pricing templates that must be used to provide the cost of the solution. Failure to use the provided pricing templates may characterize the response as non-responsive and preclude the vendor from further consideration in this procurement. Please price the solution as accurately as possible as it may become the basis for the solution price. Please provide the level of detail as defined in

the pricing templates. Clarification will be sought for incomplete responses.

**b. Client References (Appendix B)**

Please list five (5) references for AMI implementations that most closely reflect the scope of work to the City as described in this RFP. At least three (3) of the references should be for sites at which the software has been *fully implemented* within the past 3 years.

**c. Vendor Profile Questionnaire (Appendix C)**

Under this section, vendors shall complete the Vendor Profile Questionnaire referred to in Appendix D of this RFP. If sub-contractors are being proposed, please complete a Vendor Profile Questionnaire for each sub-contractor as well.

**d. Résumé of Key Personnel (Appendix D)**

Vendors shall complete the Resume of Key Personnel using the form provided. Please only include experience that is relevant to this project.

**e. Key Outside Consultants (Appendix E)**

Vendors shall provide information regarding the utilization of Key Outside Consultants using the form provided. Please note that it is the responsibility of the prime contractor to ensure that the contract terms and conditions extend to its proposed outside consultants.

**f. Certification Form (Appendix F)**

A 10% local preference is available for this procurement. To qualify for this preference, an offeror must complete and submit the local preference certification form with its offer. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.

## **PART VI**

### **LOCAL PREFERENCE CERTIFICATION FORMS**

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#### **INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM**

All information must be provided. A 10% local preference may be available for this procurement. To qualify for this preference, an offeror must complete and submit the local preference certification form with its offer. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.

1. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
2. **Principal Office and location must be stated:** To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.
3. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
4. **Definition:** The following definition applies to this preference. A local business is an entity with its Principal office and place of business located in Santa Fe County. A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.
5. **Additional Documentation:** If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business, which must be registered under state law, must be able to show that it is a business entity in good standing if so requested.

**LOCAL PREFERENCE CERTIFICATION FORM**

RFP/RFB NO:

Business Name:

Principal Office:

Street Address City State Zip Code

City of Santa Fe Business License # \_\_\_\_\_ (Attach Copy to this Form)

Date Principal Office was established: \_\_\_\_\_ (Established date must be six months before date of Publication of this RFP or RFB).

**CERTIFICATION**

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Subscribed and sworn before me by \_\_\_\_\_  
this \_\_\_\_, day of \_\_\_\_\_

My commission expires \_\_\_\_\_  
Notary Public

SEAL

**YOU MUST RETURN THIS FORM WITH YOUR OFFER**

**PART VII**  
**CITY OF SANTA FE SAMPLE CONTRACT**

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Information Technology  
Agreement  
Contract No. \_\_\_\_\_

THIS Information Technology Agreement (“Agreement”) is made by and between the City of Santa Fe, hereinafter referred to as the “City” and **[Insert Contractor Name]**, 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 City has selected the Contractor as the offeror most advantageous to the City;

WHEREAS, all terms and conditions of the RFP 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” shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative (“Executive Level Representative”) of the City.
- B. “Change Request” shall mean the document utilized to request changes or revisions in the Scope of Work.
- C. “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.
- D. “DoIT” shall mean the Department of Information Technology.
- E. “Escrow” shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.
- F. “Enhancement” means any modification or addition 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. After conferring with City, an Enhancement may be identified as minor or major.
- G. “Executive Level Representative” shall mean the individual empowered with the authority to represent and make decisions on behalf of the City’s executives.
- H. “Know How” shall mean all technical information, data 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.

- I. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- J. “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 City.
- K. “Payment Invoice” shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.
- L. “Performance Bond” shall mean a surety bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract.
- M. “Project” shall mean a temporary process 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 project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is [Insert Name of Project, if applicable; otherwise delete sentence].
- N. “Project Manager” shall mean a qualified person from the City responsible for all aspects of the Project or the administration of this Agreement. Under the terms of this Agreement, the Project Manager shall be [Insert Name] or designated representative.
- O. “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.

## **ARTICLE 2 – SCOPE OF WORK**

A. Scope of Work. The Contractor shall perform the work as outlined in **Exhibit A**, attached hereto and incorporated herein by reference.

B. Performance Measures. Contractor shall substantially perform the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the City may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the City of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the City from exercising its rights pursuant to **Article 6**.

C. Schedule. The due dates, as set forth in Exhibit A, shall not be altered or waived by the City without prior written approval, through the Change Management process, as defined in **Article 14**.

D. License. The Contractor hereby grants City a non-exclusive, irrevocable license to use, modify and copy (INSERT NAME OF SOFTWARE) and any and all updates corrections and revisions as defined in Article 2 of Exhibit A for the term of this Agreement.

The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1) Contractor agrees to maintain, at contractor's own expense, a copy of the software source code to be kept by an escrow agent and to list the City as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the City. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the software at the current revision level. Included with the media shall be all associated documentation which will allow the City to top load, compile and maintain the software in the event of a breach.

2) If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the licensed software it provided the Agency; or, if this Agreement is terminated, or if the Contractor breaches this Agreement, the Contractor shall make available to the City: 1) the latest available licensed software program source code and related documentation meant for the licensed software provided or developed under this Agreement by the Contractor and listed as part of the purchase system; 2) the source code and compiler/utilities necessary to maintain the system; and, 3) related documentation for software developed by third parties to the extent that the Contractor is authorized to disclose such software. In such circumstances, City shall have an unlimited right to use, modify and copy the source code and documentation.

### **ARTICLE 3 - COMPENSATION**

A. Compensation Schedule. The City shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, **less retainage as identified in Paragraph D**.

B. Payment. The total compensation under this Agreement shall not exceed [Insert Dollar Amount] [**CHOICE #1**- either use "excluding New Mexico gross receipts taxes" OR "including New Mexico gross receipts tax"].

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. 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 City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Taxes.

[**CHOICE #1** - Use either: " The Contractor **shall** be reimbursed by the City for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority" **or** "The Contractor **shall not** be reimbursed by the City for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the Contractor by any authority".] 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 City 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.

D. Retainage. The City shall retain **twenty percent (20%)** of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

#### **ARTICLE 4 – ACCEPTANCE**

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, **less twenty percent (20%) retainage.**

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 as defined in Article 2 and Exhibit A;

- 2.) Complies with the terms and conditions of the RFP;
- 3.) Meets the performance measures for the Deliverable(s) and this Agreement;
- 4.) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
- 5.) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, 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) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) 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 City may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the City may terminate this Agreement.

#### **ARTICLE 5 – TERM**

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY AND THE CONTRACTOR, WHICHEVER OCCURS LAST. This Agreement shall terminate on **[Insert Termination Date]**, unless terminated pursuant to Article 6. The term of this Agreement, including all extensions, shall not exceed one calendar year.

#### **ARTICLE 6 – TERMINATION**

This Agreement may be terminated as follows:

A. General. By the either Party upon written notice to be delivered to the other party not less than ten (10) business days prior to the intended date of termination.

B. Appropriations. By the City, 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 City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City terminates this Agreement pursuant to this subsection, the City shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.

C. Obligations and Waiver. By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY CAUSED BY THE CONTRACTOR'S DEFAULT OR 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 City property in which the City has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the City;
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the City;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition;
- 4.) Take such action as the City may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
- 5.) Agree that the City is not liable for any costs arising out of termination and that the City 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 City 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 City's receipt of program funds from any governmental agency, the Contractor shall remit to the City the full amount of the reduction;

- 8.) Should this Agreement terminate due to the Contractor's default, the Contractor shall reimburse the City 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 assist and cooperate with the City in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the City or created by the Contractor under this Agreement, to the City, 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 Project Manager, the Contractor shall provide to the City a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the City or created by the Contractor under this Agreement.

B. City. 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 City 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 City, 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, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any 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) days after it receives notice thereof, notify, by certified mail, the legal counsel of the City.

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 City, as necessary, to satisfy any outstanding claim that the City 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 City 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 City shall be considered the creator and owner of such Know How. The City 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 City without the express written authorization of the City. Contractor shall notify the City, 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 City 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 City. If, by judgment of a court of competent jurisdiction, Intellectual Property, Know How, or Know How Rights are not deemed to be created or owned by the City, Contractor hereby acknowledges and agrees to grant to the City, 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 City, and/or any other 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 attorneys fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City 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, as allowed under the law; and
- 3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. City 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 City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City'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 City to the extent such modification is the cause of the claim.

### **ARTICLE 11 - WARRANTIES**

A. General. The Contractor hereby expressly warrants the Deliverables 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 Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. The 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 four (4) years after Acceptance by the Executive Level Representative and implementation by the City. 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 City, 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 approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City 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 City approval. The City, 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 City reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the City, meeting the City'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 Agency and are not employees. 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 City 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 City.

### **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;
- 2) Compensation due under the terms of this Agreement; or
- 3) Due Date of any Deliverable, as outlined in Exhibit A.

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 Executive Level Representative review and approval to include: the name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the

change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change, and 2) The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working 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 contract and become binding as a part of the original contract.

#### **ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION**

If Independent Validation and Verification (“IV&V”) 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 project documentation; 2) Allowing the IV&V vendor to sit in on project meetings; and 3) Supplying the IV&V vendor with any other material as directed by the Project Manager.

#### **ARTICLE 16 – DEFAULT/BREACH**

In case of default and/or breach by the Contractor, for any reason whatsoever, the City and the City 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 City 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 City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. City’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that City 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 before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor’s site or the City’s place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than

alterations performed or caused by Contractor's officers, employees or agents) made by the City or for losses occasioned by the City's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions 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**

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the City. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the City.

#### **ARTICLE 21 – RELEASE**

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of 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 unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

#### **ARTICLE 22 – CONFIDENTIALITY**

Any confidential information provided to the contractor by the agency or, developed by the Contractor based on information provided by the 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 City. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the City within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the City 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**

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 City. The City 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 City 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.

#### **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 no later than July 1, 2010 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://insurenemexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (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 offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

#### **ARTICLE 27 --- EMPLOYEE PAY EQUITY REPORTING**

A. 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 contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts 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 contracts up to one (1) year in duration. For contracts 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 contract 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 contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award 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 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award 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 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 Contract 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 CITY

[Insert Name of Individual, Position and Agency Name, Telephone Number]  
[Insert Agency Mailing Address]

For CONTRACTOR

[Insert Name of Individual, Position]  
[Insert Address]

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

### **ARTICLE 30– GENERAL PROVISIONS**

A. 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.

B. 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 \_\_\_\_\_, pertaining to equal employment opportunity. In accordance with all such laws of the, 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.

C. 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 City.

D. 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 the county where the City's main office is located. 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.

E. 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.

F. 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 and other unexpired 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; 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 who performance is affected.

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

CITY OF SANTA FE:

\_\_\_\_\_  
BRIAN SNYDER,  
CITY MANAGER (under \$50,000)

DAVID COSS, MAYOR (over \$50,000)

\_\_\_\_\_  
DATE

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

*Judith Amerfor 11/14/13*  
\_\_\_\_\_  
KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

APPROVED:

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

\_\_\_\_\_  
Business Unit/Line Item