

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

ISSUE:

48. Request for Approval of Amendment No. 1 to Contract – City-Wide Source of Supply Emergency Repair Services for Water Division; Alpha Southwest, Inc. (Bill Huey)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of amendment no. 1 to contract for city-wide source of supply emergency repair services for water division with Alpha Southwest, Inc. in the amount of \$175,000 per fiscal year 15/16, 16/17 and 17/18 for a total of \$700,000, plus gross receipts tax, for the term of the contract.

FUNDING SOURCE: 52361.510310

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

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

4-13-15

ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING 5/6/15

ISSUE NO. 17

Request for approval of Amendment No. 1 to the PSA with Alpha Southwest for a term extension through June 30, 2018 and an increase of \$175,000.00 each fiscal year exclusive of NMGRT. (Bill Huey and Alex Puglisi)

Public Utilities Committee – 5/6/15

Finance Committee – 5/18/15

City Council – 5/27/15

PUBLIC UTILITIES COMMITTEE ACTION: Pulled by Councilor Bushee. Approved.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP: Fix memo to reflect the correct term of the amendment of June 30, 2018.

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

City of Santa Fe, New Mexico

memo

DATE: April 17, 2015

TO: Public Utilities Committee / Finance Committee

VIA: Nick A. Schiavo, Interim Public Utilities Department and Water Division Director *NSA*

FROM: Alex A Puglisi, Interim SOS Section Manager and Environmental Compliance Officer
Bill Huey, Water Division Engineer *BH*

ITEM AND ISSUE:

Request approval of Amendment #1 with Alpha Southwest, Inc. to increase the amount of not to exceed compensation by one-hundred seventy-five thousand dollars (\$175,000.00) plus tax per Fiscal Year and extending the term through 6/30/2018.

BACKGROUND AND SUMMARY:

On June 17, 2014, the City of Santa Fe Purchasing Office and the Water Division opened bids for the FY 14/15 RFB for Emergency Repair for Operations and Maintenance Contract (Contract). Two bids were received and Alpha Southwest, Inc. was the lowest. This is a requirements contract with the Water Division issuing Work Orders (WO) as needed under the contract for work such as furnishing all equipment, labor and materials for the repair, replacement, modification, and demolition services for mechanical and electrical equipment, piping, instrumentation and buildings in the City of Santa Fe and parts of Santa Fe County, for over 21 well sites, 14 ground storage tanks, 2 reservoirs, 15 booster pump station sites, and 1 treatment plant site, in accordance with the drawings, specifications, and other Contract Documents. The initial Contract amount was limited to \$175,000.00 plus New Mexico Gross Receipts Tax (NMGRT)/per year. The Contract was written with the term.

Source of Supply (SOS) requests approval of Amendment #1 to the original contract to authorize Alpha Southwest, Inc. to conduct work as needed and to fund the anticipated work maintaining their system during Fiscal Year 17/18. The requested amount of funding is \$175,000 + NMGRT per Fiscal Year.

This Contract is strictly an as-needed, on-call contract, with no guaranteed minimum. Funds for this work during the Fiscal Year 15/16 will be available upon Council approval of the FY 15/16 Budget under business unit/fund number 52361.510310 in the amount of \$175,000.00 plus NMGRT, and upon approval of annual water Operating Budgets each Fiscal Year.

ACTION REQUESTED:

Staff requests review and approval of:

- Approval of Amendment #1 to Award of RFB #14/42/B and Contract to Alpha Southwest, Inc. in the amount of \$175,000.00 plus NMGRT per Fiscal Year.
- Forwarding and recommendation of approval of award and contract to the Finance Committee on May 18th for their consideration and approval and to the Governing Body on May 27th for their final consideration and approval.

**CITY OF SANTA FE
AMENDMENT No. 1 TO
CONTRACT
ITEM#14-0740**

AMENDMENT No. 1 (the "Amendment") to the CONTRACT, dated July 30, 2014 (the "Agreement"), between the City of Santa Fe (the "City") and Alpha Southwest Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor, which occurs last.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide Source of Supply emergency repair services to the City of Santa Fe.

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

1. COMPENSATION.

Article 3.1, of the Agreement is amended, so that Article 3.1 reads in its entirety as follows:

3.1 The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed One hundred seventy five thousand dollars (\$175,000.00), plus applicable gross receipts taxes per fiscal year. Payment shall be made for services actually rendered for each Work Order at the fixed unit prices set forth in Exhibit I.

Fiscal Year 2014 – 2015, one hundred seventy five thousand dollars (\$175,000) plus applicable gross receipts taxes

Fiscal Year 2015 – 2016, one hundred seventy five thousand dollars (\$175,000) plus applicable gross receipts taxes

Fiscal Year 2016 – 2017, one hundred seventy five thousand dollars (\$175,000) plus applicable gross receipts taxes

Fiscal Year 2017 – 2018, one hundred seventy five thousand dollars (\$175,000) plus applicable gross receipts taxes

The total amount for the three (4) years will be for services rendered to the City.

2. TERM.

Article 8 of the Agreement is amended to extend the term of the Agreement to June 30, 2018. The term of this agreement shall not exceed four (4) years in accordance with the terms of this agreement, unless sooner pursuant to Article 6.

3. AGREEMENT IN FULL FORCE.

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

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

CITY OF SANTA FE:

CONTRACTOR:
ALPHA SOUTHWEST, INC.

JAVIER M. GONZALES, MAYOR

NAME & TITLE

DATE: _____

DATE: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK



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

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

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

2 Name of Contractor Alpha Southwest

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$175,000.00

Termination Date: June 30, 2015

Approved by Council Date: Pending

or by City Manager Date: _____

Contract is for: Emergency Repair and Ops

Amendment # 1 to the Original Contract# 14-0740

Increase/(Decrease) Amount \$ 175000 per fy

Extend Termination Date to: June 30, 2018

Approved by Council Date: Pending

or by City Manager Date: _____

Amendment is for: amend term and comp per each FY

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

Amount \$ 175,000.00 of original Contract# 140740 Termination Date: 06/30/2015

Reason: emergency repair

Amount \$ 175000 per fy amendment # 1 Termination Date: 06/30/2018

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 700,000



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

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

RFP# 14/42/B Date: June 18, 2014
 RFQ _____ Date: _____
 Sole Source _____ Date: _____
 Other _____

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

7 Funding Source: CIP Well 9 **BU/Line Item:** 52361.53012

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

9 Staff Contact who completed this form: maya martinez
 Phone # _____ -4271

10 Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature

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

To be recorded by City Clerk:

Contract # _____

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

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

Comments:

A. Construction Agreement

CONTRACT

THIS CONTRACT is entered into as of the 30th day of July, 2014 between, a Alpha Southwest Inc. with principal offices located at 205 Rossmoor Rd SW, Albuquerque, NM (hereafter "Contractor"), and City of Santa Fe, (hereafter "City"). Hereafter, Contractor and City of Santa Fe Water Division are often collectively referred to as "Parties" and singularly as "Party."

A. This Contract is for the Source of Supply; RFB for Emergency Repair for Operations and Maintenance at the fixed unit prices set forth in Exhibit I – Fixed Unit Price Schedule. City and Contractor mutually agree to perform this Contract in strict accordance with the Contract Terms and Conditions (Attachment A), the City of Santa Fe Water Division General Construction Conditions (Exhibit II), and all other exhibits attached to and incorporated by reference in the Contract Terms and Conditions.

B. The Contract documents consist of this Contract and all Attachments and Exhibits thereto and all subsequent changes. The Contract documents are complementary and what is called for by one is as binding as if called for by all. If Contractor finds a conflict, error, or discrepancy in the Contract documents, Contractor will call it to City's attention in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors, or discrepancies, the documents shall be given precedence in the following order: (a) Change Orders, (b) Contract Terms and Conditions, (c) Scope of Work, (d) General Conditions, (e) any other provisions in this Contract, and (f) the Contractor's proposal if incorporated in this Contract by reference.

C. This Contract constitutes and expresses the entire agreement between the Parties with respect to the subject matter; all prior agreements, representations, statements, negotiations and undertakings are superseded hereby. This Contract may not be modified nor amended except by written instrument executed on behalf of each Party by an officer or other duly authorized representative.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed on the day and year first above written.

CONTRACT TERMS AND CONDITIONS

ARTICLE 1 SCOPE OF WORK

Work involves the installation, replacement, or emergency spot repair of water distribution system facilities such as water mains, valves, fire hydrants, metered water service installations, pressure regulating stations, and related work for the City of Santa Fe Water Division.

1.1 The Contractor shall furnish all necessary supervision, labor, materials, and facilities, required to accomplish the Work set forth in the applicable work order (WO), and in the following Exhibits, which are incorporated by reference in this article:

- Exhibit I Fixed Unit Price Bid Schedule – Bid Form
- Exhibit II City of Santa Fe Water Division General Construction Conditions
- Exhibit III Wage Rate Schedule & City of Santa Fe Living Wage Ordinance 2003-8
- Exhibit IV Work Descriptions with Measurement and Payment for Unit Prices
- Exhibit V City of Santa Fe Water Division Construction Specifications
- Exhibit VI Standard Construction Details Water Distribution Systems
- Exhibit VII Standard Project Signs

1.2 Work performed under this Contract shall be authorized in writing by a WO signed by the following City authorized representatives (hereafter "Authorizing Representative"): for WOs or any changes thereto which exceed \$10,000, the City Manager; for all other WOs, the City Water Division Director, or his/her designee. A WO signed by other than City Authorizing Representative shall not be honored. Each WO shall set forth (i) the Supervising Engineer and the Work Order, which shall set forth the Work to be Performed by the Contractor, (ii) the period of performance, (iii) the fixed unit prices per Exhibit I, as applicable, (iv) the ceiling price, and (v) other data as necessary. The Contractor shall, upon acceptance of the WO, provide applicable Payment and Performance Bonds and all supervision, labor, supplies, materials, and facilities, including all vehicles and transportation, except as may be provided by the City, for the performance of the Work authorized therein. Verbal authorizations may be given by the

City in emergency situations, but shall be confirmed in writing by the City within five (5) days of the verbal authorization to Contractor.

1.3 The City may at any time, without notice to sureties, if any, make changes in a WO; if any such change requires the inclusion of additional provisions, or otherwise affects any other provision of a WO as initially set forth or previously amended an equitable adjustment shall be made in such provision of the WO as may be so affected, and the WO shall be modified in writing accordingly. Any claim by Contractor for adjustment under this article must be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change; provided, however, that if the City decides that the facts justify such action, it may receive and act upon such claim asserted at any time prior to final payment under a WO. However, nothing in this article shall excuse Contractor from proceeding with the WO as changed.

ARTICLE 2 TERM

2.1 The term of this Contract shall commence on the date listed in the Construction Agreement and **expire on June 30, 2015**. The term may be extended for three (3) additional twelve (12) month periods not to exceed 4 years, by the written agreement of the Parties amending this Contract.

ARTICLE 3 COMPENSATION

3.1 The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed One hundred seventy five thousand dollars (\$175,000.00), plus applicable gross receipts taxes. Payment shall be made for services actually rendered for each Work Order at the fixed unit prices set forth in Exhibit I.

3.2 Contractor shall submit to the City a detailed statement of the quantity of Work completed under all Work Orders during the preceding calendar month, together with an invoice based on such statements. In the event the City shall question any items included in said statement and invoice, the items in question shall be deducted and the remainder of the invoice amount paid in the manner specified and Contractor promptly notified of the amount withheld. When the accuracy of the withheld items is established or adjustment thereof has been agreed upon between the Parties. City shall promptly pay, in the specified manner, the invoice amount for such items agreed upon.

ARTICLE 4
INVOICING AND PAYMENT

4.1 Contractor shall submit invoices to the City which shall reference this Contract number, the WO number (if applicable), with such other documentation as the City may require to:

City of Santa Fe Water Division
Attention: Alex A. Puglisi
Source of Supply Manager
1780 Canyon Road
Santa Fe, New Mexico 87501

4.2 Payment of each invoice is due within twenty-one (21) days of its receipt by the City; provided, however, if the City objects to all or any portion thereof, it shall so notify Contractor of same after receipt, and shall pay that portion of the invoice not in dispute, and the Parties shall immediately make every effort to settle the disputed portion.

ARTICLE 5
INSURANCE

5.1 Without limiting any liabilities or any other obligations of Contractor, Contractor shall unless otherwise approved in writing, provide and maintain, with forms and insurers acceptable to the City, until all the obligations under this Contract are satisfied, the minimum coverage as follows:

5.2 Worker's Compensation Insurance to cover obligations imposed by Federal and State statutes having jurisdiction of its employees engaged in the performance of the services, and Employer's Liability Insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000.00).

5.3 Comprehensive General Liability Insurance, or the equivalent, with a minimum combined single limit of One Million Dollars (\$1,000,000.00) for each occurrence. The policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, contractor's protective, and products and completed operations. Where applicable, the policy shall include coverage for the hazards commonly referred to as XCU.

5.4 Comprehensive Automobile Liability Insurance, or the equivalent, with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to Contractor's vehicles whether owned, hired, or non-owned, assigned to or used in the performance of the Services.

5.5 The policies required by paragraph 5.3 of this ARTICLE shall be endorsed to include City of Santa Fe as an additional insured.

5.6 Prior to commencing Services, Contractor shall furnish the City with Certificates

of Insurance as evidence that policies providing the required coverage, conditions, and limits are in full force and effect. Such Certificates of Insurance shall provide that not less than thirty (30) days advance notice of cancellation, termination, or alteration shall be sent directly to the City addressed as follows:

City of Santa Fe Water Division
Attention: Alex A. Puglisi
Source of Supply Manager
1780 Canyon Road
Santa Fe, New Mexico 87501

5.7 Costs for coverage maintained by Contractor shall not be charged to the City.

5.8 Contractor shall require that each subcontractor comply with insurance requirements as set forth herein.

ARTICLE 6 REPRESENTATIVES AND NOTICES

6.1 Contractor shall place a Project Manager in charge of the Work. The Project Manager and all other supervisory personnel assigned to the Work shall be permanent employees of Contractor. The Project Manager shall maintain close contact with the City Water Division Engineer Supervisor and shall spend part of his time in the field, as required. All instructions, requests for changes, and other communications to Contractor shall be directed in writing to the Project Manager.

6.2 The City hereby appoints the Engineer Supervisor as the Contract Administrator, who shall have authority to review Contractor's performance of WO's issued hereunder, and approve alterations in plans or specifications, and who shall cooperate with Contractor to the end that the greatest economy and speed consistent with good workmanship may be attained, and to whom all communications from Contractor shall be directed and from whom Contractor shall receive all requests for changes and other communications made on behalf of the City. The City may appoint another Contract Administrator at any time by written notice to Contractor.

6.3 Any formal notice, demand, or request provided for in this Contract shall be deemed properly made if personally delivered, or sent by registered or certified mail, postage prepaid, to the person specified below:

To Contractor: Alpha Southwest Inc.
205 Rossmoor Rd SW
Albuquerque, NM 87105

To City:

City of Santa Fe Water Division
Attention: Alex A. Puglisi
Source of Supply Manager
1780 Canyon Road
Santa Fe, New Mexico 87501

6.4 Nothing contained in this article shall preclude the transmission of routine correspondence, messages, and information between the respective Parties hereto, either at the Work site or at their respective home offices, by an official of either Party or their representatives.

ARTICLE 7 WORK ORDER CONDITIONS

7.1 Contractor shall begin work within a period of 10 calendar days from receiving a valid WO from the City. Contractor shall commence construction on the project and diligently carry each WO assignment through to satisfactory completion in strict accordance with this Contract. Each WO shall specify a completion date as agreed upon by Contractor and City Authorized Representative. Contractor shall submit to City Water Division a progress report twice each calendar month on the status of all outstanding WO's. Contractor's report shall include the following items:

- 1)Contract Number and Work Order
- 2)Short Title
- 3)Date Work Order Issued to Contractor
- 4)Percent Completed
- 5)List of any Outstanding Invoices
- 6)Discussion / Identification of Outstanding Issues

If construction exceeds the time limit set forth on the WO or requires rescheduling, the Contractor's justification shall be indicated in the report.

7.2 This project consists of the summation of all of the WO's issued in accordance with the Contract Documents. Actual work depends on the unknown needs of the City Water Division, and others. The dollar amounts used to evaluate the bids are not guaranteed as the final contract amount.

7.3 The fixed unit prices shall apply to the Contract for "Emergency Repair for Operations and Maintenance". Work may be in any location within the Water Division system, dependant upon the demands placed upon the Water Division. The Water Division is located primarily within or near the City of Santa Fe and includes the Buckman Well Field. WOs shall be made up of any combination of bid items required and shall be issued at any time during the term of the Contract.

7.4 In the preparation and issuance of WOs, any and all of the bid items in this Contract may be combined or used interchangeably with any of the other bid items.

7.5 This contract will primarily be used for issuance of WOs for the repair/replacement of water pumps and work on the water production network.

7.6 The City reserves the right at any time to perform maintenance, repair, and related work on any existing facilities either with its own forces, or by force-account, or by separate contract.

7.7 The City reserves the right at any and all times to ask for bids outside this contract on any WO with a construction cost estimate that exceeds \$25,000.

7.8 Prior to issuance, the value of each WO will be estimated by the City using an estimate of the quantities required to do the work and the contract unit prices. The price of any items in the estimated quantity not covered by a unit price in the contract will be negotiated between the City and the Contractor prior to issuing the WO. The City reserves the right to ask for bids outside this contract on any WO when 15 percent or more of the estimated construction cost involves items not covered by bid items contained in this contract.

7.9 The City reserves the right to issue WOs that cover work at a single site or multiple sites.

7.10 Should the City exercise its option to solicit bids on any WO outside this contract, the resulting contract shall be considered as a separate contract from this contract and will relate in no way to the contractual agreements, time, estimate quantities, or money contained in this contract.

7.11 The City of Santa Fe Water Division Construction Specifications make frequent reference to the Developer. For the purposes of this contract, the Contractor shall be deemed as the Developer for purpose of said Construction Specifications.

ARTICLE 8 MATERIAL STOCK AND WORKFORCE REQUIREMENTS

8.1 In order to not delay the completion of projects required under this contract, the Contractor shall be required to keep a sufficient stock of materials on hand for the completion of the more ordinary projects. This is required due to the fact that these items cannot be secured immediately in Santa Fe. Contractor shall keep on hand the items listed below complete with all jointing materials and incidental supplies. Contractor shall, for his convenience, consult the City's Authorized Representative one month prior to the termination of the Contract so that the inventory may be reduced and Contractor may have as few of the items on hand at the completion of the contract as practical.

8.2 The City shall have no responsibility to the Contractor for the purchase of any surplus items remaining at the end of the Contract term. As depletion of the stock occurs below the minimum stocking level, orders must be placed immediately to replace them. Failure to do so may be considered as failure on the Contractor's part to comply with the terms and conditions of the contract.

8.3 The use of any of the items under this Contract shall be prescribed by the City's Authorized Representative. Any deviation from the City's Authorized Representative's plan in the use of fittings due to the Contractor's failure to keep the items listed below in stock shall be at the Contractor's expense.

8.4 The Contractor shall maintain a sufficiently trained work force in sufficient numbers to complete the work under the contract in an efficient and timely manner. Contractor shall also furnish sufficient equipment and tools to complete work in an efficient and timely manner. Work shall not be delayed due to contractor's lack of tools or equipment.

8.5 The Contractor shall maintain a local office and permanent yard within 5 miles of the City of Santa Fe Municipal Boundary during the performance of this contract and shall have personnel available outside of normal business hours to handle emergency or warranty work. Prior to executing the contract, the contractor will be required to supply a local telephone contact that is available 24 hours a day for emergency and warranty call out work.

ARTICLE 9 EMERGENCY REPAIRS

9.1 As a supplement to the Water Division's on-staff work crews, emergency call out unit prices are included in this contract. Most emergency work required to operate the Water Division system will be performed by Water Division crews. If the need arises, the City will contact the Contractor to do emergency repair work. This work will be paid using the Emergency Call Out set forth in the fixed unit prices in Exhibit I.

9.2 The work will be paid using emergency prices only if the job is declared an emergency by the City. A WO will be issued within five (5) working days of the start of the emergency work. Either the Water Division Engineer Supervisor, Transmission and Distribution Supervisor or Source of Supply Supervisor will provide the scope of the work prior to starting.

9.3 The emergency prices shown on Exhibit I will be used in addition to the Base Construction Unit Prices. If an emergency is declared, the work will be paid by the unit prices listed in the Base Construction Unit Prices plus the applicable equipment rate. Any materials not covered by a Base Construction Unit Price will be paid by invoice cost from the supplier plus the material Mark Up rate not to exceed the rate listed in the Bid Form.

9.4 An authorized Representative will notify contractor of an emergency. A City representative will brief the Contractor, at the job site or at the division, prior to beginning emergency work. The Contractor shall provide supervision at the emergency location within two (2) hours after contact by the City, and labor and equipment to get underway with the work within six (6) hours of being contacted.

ARTICLE 10
WAGE RATES

10.1 The Contractor shall comply with all wage rates requirements as shown on Exhibit III, Wage Rate Schedule, Contractor shall maintain all records of wages paid and be available to the City or State of New Mexico Department of Finance and Administration for auditing.

ARTICLE 11
NON APPROPRIATIONS

11.1 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

ARTICLE 12
APPLICABLE LAW; CHOICE OF LAW; VENUE

12.1 Contractor shall abide by all the applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

ARTICLE 13
NON-DISCRIMINATION

13.1 During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed,

color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

ARTICLE 14
ASSIGNMENT; SUBCONTRACTING

14.1 The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

ARTICLE 15
THIRD PARTY BENEFICIARIES'

15.1 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

ARTICLE 16
GENERAL AND SPECIAL PROVISIONS

16.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

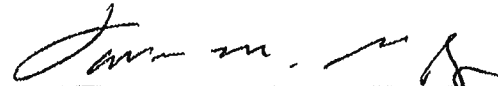
16.2 Unless expressly provided otherwise, terms in this Agreement shall have the same meaning as those in the Conditions of the Contract for Construction.

16.3 The Contractor shall defend, indemnify and hold harmless the City against any and all injury, loss or damage, including cost of defense, and including without limitation, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

ARTICLE 17
NEW MEXICO TORT CLAIMS ACT

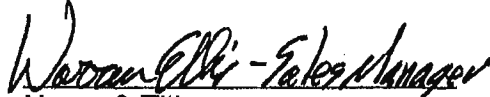
17.1 Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not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

CITY OF SANTA FE:


Javier M. Gonzales, Mayor

8/8/14
Date

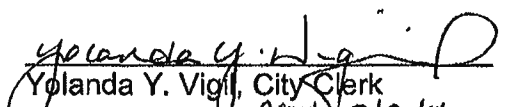
CONTRACTOR:
ALPHA SOUTHWEST, INC.


Name & Title

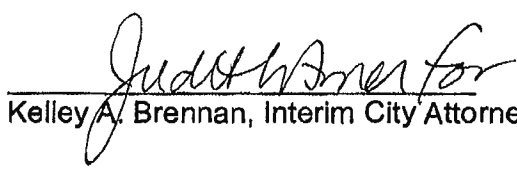
8/22/14
Date

CRS# 01-711081-005
City of Santa Fe Business Reg
14-00110357


ATTEST:


Yolanda Y. Vigil, City Clerk
Comptroller 7/30/14

APPROVED AS TO FORM:


Kelley A. Brennan, Interim City Attorney 6/19/14

APPROVED:


Marcos A. Tapia, Finance Director 8/17/2014

Business Unit / Line Item # 52361.510320

A. Performance Bond

A. KNOW ALL MEN BY THESE PRESENTS, that

(here insert the name and address or legal title of the Contractor)
as Principal, hereinafter called Contractor, and

(here insert the legal title of Surety)
as Surety, hereinafter called Surety, are held firmly bound unto the City of Santa Fe, a New Mexico municipal corporation as Obligee, hereinafter called City, in the amount of _____ DOLLARS, (\$ _____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

B. WHEREAS, the Contractor has by written agreement dated _____, 20014, entered into a contract with the City of Santa Fe for the _____ in accordance with drawings and specifications prepared by the City of Santa Fe which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The Surety hereby waives notice of any alteration or extension of time made by the City.

2. Whenever Contractor shall be, and declared by the City to be in default under the contract, the City having performed City's obligations thereunder, the surety may promptly remedy the default or shall promptly:

- a. Complete the contract in accordance with its terms and conditions or;
- b. Obtain a bid or bids for submission to City for completing the contract in accordance with its terms and conditions, and upon determination by City and Surety of the lowest responsible bidder, arrange for a contract between such bidder and City, and make available as work progresses (even though there should be a default or a secession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by City to Contractor under the contract and any

amendments thereto, less the amount properly paid by City to Contractor.

3. Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

4. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators or successors of the City.

SIGNED AND SEALED ON _____, 20__.

Notary Public

My Commission Expires:

Contractor – Principal

By: _____

Title: _____

Approved as to form:

Surety

Title: _____

Countersigned: _____

Surety's Authorized New Mexico Agent