**Attachment A – Vendor Reference Form**

*Vendors shall complete a Vendor Reference Form for each provided reference in accordance with Sections 4.17 and 4.18 of the RFP.*

1. **General Background**

Name of Client:

Number of Employees: Operating Budget:

Address:

Project Manager/Contract: Title:

Phone Number: E-Mail Address:

Summary of Project and Current Status:

1. **Project Scope**

Please indicate all modules that were implemented as part of the project:

|  |  |  |  |
| --- | --- | --- | --- |
| Plan Tracking and Review |  | Code Enforcement |  |
| Permitting |  | Business Licensing |  |
| Inspections |  | eGovernment and Web Capabilities |  |

1. **Project Information**

Total Project Budget:

Project Start Date: Project End Date:

**Attachment E – Ownership of Deliverables**

Vendors shall complete Table E-03 below based on whether the roles identified are supported by the proposed approach and implementation methodology. The roles are defined in Table E-01 and Table E-02 contains the indicators vendors shall use to report their support of the identified roles. Any conflicts shall be noted with a comment. In the event additional deliverables are proposed, vendors shall identify the roles for both the City and Vendor Project Teams.

**Table E-01: Definition of Roles**

|  |  |
| --- | --- |
| **Role** | **Summary** |
| Lead | The party ultimately responsible for the development of the deliverable. |
| Assist | The party provides active assistance in development of the deliverable |
| Participate | The party provides passive assistance in the development of the deliverable. |
| Owns | The party is solely responsible for the development of the deliverable. |
| Share | Both parties share equal responsibility for the development of the deliverable. |
| None | The party has no role in the development of the deliverable. |

**Table E-02: Summary of Response Indicators**

|  |  |  |
| --- | --- | --- |
| **Indicator** | **Response** | **Description** |
| **S** | Supports | The proposed supports the prescribed ownership roles with its proposed implementation methodology and approach. |
| **C** | Conflict | The proposed has a conflict with the prescribed ownership roles and proposed alternate ownership in its proposed implementation methodology and approach |

**Table E-03: Ownership of Deliverables**

| **No** | **Deliverable** | **Vendor Role** | **City Role** | **Vendor Response** | **Comments** |
| --- | --- | --- | --- | --- | --- |
| **1** | Implementation Project Plan | Lead | Assist |  |  |
| **2** | System Interface Plan | Lead | Assist |  |  |
| **3** | Data Conversion Plan | Lead | Assist |  |  |
| **4** | Testing and Quality Assurance Plan | Share | Share |  |  |
| **5** | Pre- and Post-Implementation Support Plan | Share | Share |  |  |
| **6** | Training Plan | Lead | Participate |  |  |
| **7** | System Documentation | Owns | None |  |  |
| **8** | Risk Register | Share | Share |  |  |

**Attachment F – Receipt of Addenda Form**

**Addendum Acknowledgement RFP #16/22/P**

**The undersigned acknowledges receipt of the following addendum(s):**

|  |  |
| --- | --- |
| **Addendum #** | **Date** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

I have examined and carefully prepared the submittal documentation in detail before submitting my response to the City of Santa Fe.

|  |  |
| --- | --- |
| Company Name: |  |
| Authorized Representative: |  |
| Authorized Representative: | Print |
|  | Signature |
| Date: |  |

It is the vendor’s responsibility to check for addendums, posted on the website at <http://www.santafenm.gov/bids_rfps> prior to the submittal due date.

If the submittal has already been received by the City of Santa Fe, vendors are required to acknowledge receipt of addendum via email to the RFP Point of Contact prior to the due date.

Submittals that do not acknowledge addendums may be rejected.

All responses are to be submitted in a sealed envelope. Envelopes are to be clearly marked with required submittal information.

**Attachment G – Statement of Non-Collusion Form**

The following statement shall be made as part of the Contractor’s proposal.

I affirm that I am the Contractor, a partner of the Contractor, or an officer or employee of the Contractor’s corporation with authority to sign on the Contractor’s behalf.

I also affirm that the attached has been compiled independently and without collusion or agreement, or understanding with any other vendor designed to limit competition.

I hereby affirm that the contents of this Proposal have not been communicated by the Contractor or its agent to any person not an employee or agent of the City.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Signed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Print Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Contractor Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City / State / Zip Code

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone and Fax

**Attachment H - Responsibility of Data Conversion Activities**

Vendors shall complete Table H-03 below based on whether the roles identified are supported by the proposed data conversion methodology and approach. The roles are defined below. Any conflicts shall be noted with a comment. In the event additional activities are proposed, the Proposers shall identify the roles for both the City and Implementation Vendor Project Teams.

**Table H-01: Definition of Roles**

|  |  |
| --- | --- |
| **Role** | **Summary** |
| Lead | The party ultimately responsible for the activity. |
| Assist | The party provides active assistance for the activity. |
| Participate | The party provides passive assistance for the activity. |
| Share | Both parties share equal responsibility for the activity |
| None | The party has no role in the activity. |

**Table H-02: Summary of Response Indicators**

|  |  |  |
| --- | --- | --- |
| **Indicator** | **Response** | **Description** |
| **S** | Supports | The proposal supports the prescribed responsibility roles with its proposed data conversion methodology and approach. |
| **C** | Conflict | The proposal has a conflict with the prescribed responsibility roles and proposed alternate responsibility in its proposed data conversion methodology and approach |

**Table H-03: Responsibility of Deliverables**

| **No** | **Data Conversion Activity** | **Vendor Role** | **City Role** | **Response** | **Other Comments** |
| --- | --- | --- | --- | --- | --- |
| **1** | Conversion Analysis | Lead | Participate |  |  |
| **2** | Crosswalk Development | Lead | Participate |  |  |
| **3** | Provide Conversion Data | None | Lead |  |  |
| **4** | Provide File Layouts/Data Maps of Existing System | None | Lead |  |  |
| **5** | Proof Data Provided | Assist | Lead |  |  |
| **6** | Analysis of Data to be Converted | Lead | Assist |  |  |
| **7** | Developing and Testing Conversions | Lead | None |  |  |
| **8** | Review and Correct Errors | Share | Share |  |  |
| **9** | Load Converted Data into Training Database | Lead | Participate |  |  |
| **10** | Confirmation of Converted Data in Training Database | None | Lead |  |  |
| **11** | Approval/Sign-Off of Converted Data in Training Database | None | Lead |  |  |
| **12** | Load Converted Data into Live Database | Lead | Participate |  |  |
| **13** | Confirmation of Converted Data into Live Database | None | Lead |  |  |
| **14** | Approval/Sign-Off of Converted Data in Live Database | None | Lead |  |  |

**Attachment I – Company Background and History Form**

*Vendors shall complete a Company Background and History Form in accordance with Section 4.6 of the RFP. If a partnership with third-party companies is a part of a Proposal, the company background and history form shall be provided for all third-party companies. It is expected that all of the points shall be addressed for each company involved in a Proposal, prime or third-party.*

**Table I-01: Company Background and History**

| **Metric** | **Response** |
| --- | --- |
| Total number of employees |  |
| Type and number of employees committed to the product and support being proposed |  |
| Office locations |  |
| Total number of active clients |  |
| Total number of active government clients |  |
| Total number of active City government clients |  |
| Total number of New Mexico clients |  |
| Total number of New Mexico City clients |  |
| Total number of completed implementations of the proposed product and version |  |
| Total number of active government clients using the proposed product version |  |
| Total years offering government Community Development Systems |  |
| Largest active government installation including population |  |
| Smallest active government installation including population |  |
| Other products offered by company |  |

Please provide responses to each of the following narrative questions, or provide the requested information:

1. Please provide any business and development plans for all product and support services proposed in connection with this submission
2. Please provide a breakdown of revenue between new license fees, maintenance, and upgrade charges for last year for the product(s) being proposed, as well as other products offered by the company.

**Table I-02: Product Revenue**

|  |  |  |  |
| --- | --- | --- | --- |
| **Product Name** | **New License Fees ($)** | **Maintenance ($)** | **Upgrade Charges ($)** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

1. Please provide documentation illustrating the company organization and segmentation.
2. Please provide a breakdown of expenses for the last year spent in connection with research and development for the product(s) being proposed, as well as other products offered by the company.

**Table I-03 Research and Development Expenses**

|  |  |  |
| --- | --- | --- |
| **Product Name** | **Research Expenses ($)** | **Development Expenses ($)** |
|  |  |  |
|  |  |  |
|  |  |  |

**Attachment J – Proposed Software Modules Form**

*Vendors shall complete table J-01 in accordance with Section 4.3 of the RFP. Proposed modules that are required to satisfy the requirements associated with the functional areas identified in Table J-01 cannot be proposed complementary or optional.*

**Table J-01: Proposed Functional Areas/Modules**

| **No.** | **Functional Area** | **Proposed Module(s) To Address Requested Functional Area** | **Third-party Partnerships and/or Solutions Successfully Integrated\* with, in the Past** |
| --- | --- | --- | --- |
| **1** | Plan Tracking and Review |  |  |
| **2** | Permitting |  |  |
| **3** | Inspections |  |  |
| **4** | Code Enforcement |  |  |
| **5** | Business Licensing |  |  |
| **6** | eGovernment and Web Capabilities |  |  |

\*Successful integration should include only those instances where both the software and the client are in production environments.

**Attachment K – Local Preference Certification Forms**

*Vendors shall complete, if applicable, the Local Preference and Veteran Preference Certification Forms included in this attachment in accordance with Section 5.37 of the RFP.*

**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**

**RESIDENT VETERANS PREFERENCE CERTIFICATION**

(NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans’ preference to this procurement.

**Please check one box only:**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than $1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

* I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $1M but less than $5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
* I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)\* (Date)

\*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS DAY OF \_, 2012.

NOTARY PUBLIC

My Commission Expires:

**Attachment L - City of Santa Fe Ordinance No. 2003-8**

*This Attachment is being provided to Vendors for reference, in accordance with Section 5.38 of the RFP.*

**CHAPTER XXVIII WAGE REQUIREMENTS**

* 1. **LIVING WAGE.**

**28-1.1 Short Title.**

This section may be cited as the "Living Wage Ordinance". (Ord. #2002-13, §1)

**28-1.2 Legislative Findings.**

The governing body of the city has determined that:

* + 1. The public welfare, health, safety and prosperity of Santa Fe require wages and benefits sufficient to ensure a decent and healthy life for workers and their families;
    2. Many Santa Fe workers earn wages insufficient to support themselves and their families;
    3. Many Santa Fe workers cannot participate in civic life or pursue educational, cultural, and recreational opportunities because they must work such long hours to meet their households' most basic needs;
    4. Minimum wage laws promote the general welfare, health, safety and prosperity of Santa Fe by ensuring that workers can better support and care for their families through their own efforts and without financial governmental assistance;
    5. The average earnings per job in Santa Fe County is twenty-three percent (23%) below the national average and the cost of living is eighteen percent (18%) higher than the national average;
    6. Housing costs in Santa Fe are much higher than in most other parts of New Mexico, and low income workers must therefore spend a disproportionate percentage of their income sheltering themselves and their families;
    7. Livable wages also benefit employers and the economy as a whole by improving employee performance, reducing employee turnover, lowering absenteeism, and thereby improving productivity and the quality of the services provided by employees;
    8. When businesses do not pay a livable wage, the community bears the cost in the form of increased demand for taxpayer-funded social services including homeless shelters, soup kitchens and healthcare for the uninsured. Coupled with high real estate values, low wages reduce the ability of low- and moderate-income residents to access affordable housing. As a result, the city has had to invest significant tax dollars to support affordable housing including funding to nonprofit organizations, purchasing land, building infrastructure and waiving fees. In addition, the city has allocated significant tax dollars to operate after school and summer recreation programs and to support nonprofit organizations offering an array of human services and children and youth services, all of which are needed by very low-income residents and their families;
    9. It is in the public interest to require certain employers benefiting from city actions and funding, and from the opportunity to do business in the city, to pay employees a minimum wage, a "living wage", adequate to meet the basic needs of living in Santa Fe;
    10. According to the 2000 Census, approximately twelve and three-tenths percent (12.3%) of the Santa Fe community lives below the poverty level; and
    11. According to the New Mexico department of labor, twenty-three and one-half percent (23.5%) of Santa Feans who are employed in the nongovernmental sector earn hourly wages of ten dollars and fifty cents ($10.50) per hour or less.
    12. The governing body has reviewed the impact of previous minimum wage increases, relevant studies and other appropriate data, and finds that the city's minimum wage should be upwardly adjusted each year to keep pace with increases in the cost of living.
    13. The governing body has found that limiting coverage of the minimum wage just to businesses with twenty-five (25) or more employees has hindered compliance and has created an uneven playing field among local businesses.

(Ord. #2002-13, §2; Ord. #2003-8, §1; Ord. #2007-43, §1)

**28-1.3 Authority of the City of Santa Fe.**

This Living Wage Ordinance is adopted pursuant to the general welfare and police powers conferred upon the city of Santa Fe by §3-17-1 et seq. and §3-18-1 et seq. NMSA 1978, pursuant to the powers conferred upon the city of Santa Fe by New Mexico Constitution, Article X §§6(D) and 6

(E) and the Municipal Charter Act §3-15-1 et seq. NMSA 1978, which have been exercised by the city's adoption of its "Santa Fe Municipal Charter". (Ord. #2002-13, §3; Ord. #2003-8, §2)

**28-1.4 Purpose.**

The purposes of this section are:

* + 1. To have the city of Santa Fe set an example for the public and private sectors by paying its employees a minimum wage adequate to meet the basic needs of living in Santa Fe.
    2. To raise the income of low-income employees of employers who contract with the city, receive grants, subsidies or other benefits from the city or benefit from the opportunity to do business in Santa Fe.

(Ord. #2002-13, §4; Ord. #2003-8, §3)

* + 1. **Minimum Wage Payment Requirements.**

1. The following shall pay the minimum wage:
   * 1. The city of Santa Fe to all full-time permanent workers employed by the city. However, the provisions of this section are expressly limited by and subject to future union negotiations in compliance with the Fair Labor Standards Act and subsequent appropriations by the governing body in compliance with the Bateman Act;
     2. Contractors for the city, that have a contract requiring the performance of a service including construction services but excluding purchases of goods, shall pay the minimum wage to their workers and subcontractors performing work under the contract if the total contract amount with the city is, or by way of amendment becomes, equal to or greater than thirty thousand dollars ($30,000.); and
     3. Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars ($25,000.) to those employed by such entity for the duration of the city grant or subsidy; and
     4. Businesses required to have a business license or business registration from the city of Santa Fe and nonprofit organizations shall pay the minimum wage to their workers for all hours worked within the city of Santa Fe that month. For purposes of this paragraph, worker shall not include any person who is related by blood or by marriage to any person who may have or possess any ownership interest in the business that employs them. For purposes of identifying persons entitled to be paid the minimum wage, all individuals employed by or providing work to the business for compensation, whether on a part-time, full-time or temporary basis, during a given month shall be counted as a worker. This definition shall include contingent or contracted workers, and persons made available to work through the services of a temporary service, staffing or employment agency or similar entity. However, interns working for a business for academic credit in connection with a course of study at an accredited school, college or university or persons working for an accredited school, college or university while also attending that school, college or university, or persons working for a business in connection with a court-ordered community service program such as teen court or workers who are in an apprenticeship program in a 501C(3) organization (such as the Santa Fe Opera) shall not be counted as a worker for such purposes.
2. Beginning January 1, 2004, the minimum wage shall be an hourly rate of eight dollars and fifty cents ($8.50). In computing the wage paid for purposes of determining compliance with the minimum wage, the value of health benefits and childcare shall be considered as an element of wages. On January 1, 2006, the minimum wage shall be increased to an hourly rate of nine dollars and fifty cents ($9.50). Beginning January 1, 2009, and each year therafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the consumer price index for the western region for urban wage earners and clerical workers.
3. For workers who customarily receive more than one hundred dollars ($100.) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
4. Nonprofit organizations whose primary source of funds is from Medicaid waivers are exempt.
5. Staff shall contract for a study or studies to review the impact of changes made to the Living Wage Ordinance approved as Ordinance No. 2007-43 on businesses of less than ten employees and on the student drop-out rate. The study shall be presented to the governing body no later than July 1, 2009.

(Ord. No. 2002-13, §5; Ord. #2003-8, §4; Ord. #2005-40; Ord. #2007-43, §2)

**28-1.6 Prohibitions Against Retaliation and Circumvention.**

1. It shall be unlawful for any employer or employer's agent or representative to take any action against an individual in retaliation for the exercise of or communication of information regarding rights under this section. This section shall also apply to any individual that mistakenly, but in good faith, alleges noncompliance with this section.
2. Taking adverse action against an individual within sixty (60) days of the individual's assertion of or communication of information regarding rights shall raise a rebuttable presumption of having done so in retaliation for the assertion of rights.
3. It shall be unlawful for any business or employer to intentionally circumvent the requirements of this section by contracting portions of its operation or leasing portions of its property. (Ord. #2002-13, §6; Ord. #2003-8, §5)

**28-1.7 Reserved.**

**Editors Note:** Former subsection 28-1.7, Compliance Through Collective Bargaining Process, previously codified herein and containing portions of Ordinance No. 2002-13, was repealed in its entirety by Ordinance No. 2004-38.

**28-1.8 Enforcement; Remedies.**

1. *Administrative Enforcement.* The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this section. The city manager is authorized to investigate possible violations of this section. Where the city manager, after a proceeding that affords a suspected violator due process, concludes that a violation has occurred, the city manager may issue orders to the employer appropriate to effectuate the complaining person's rights, including but not limited to back pay and reinstatement. The city manager also has the power to order termination of any and all economic benefit derived by any offending party from the city and has the power to revoke the employer's business license or registration.
2. *Criminal Penalty*. A person violating this section shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this section shall be guilty of a separate offense for each day or portion thereof and for each worker or person as to which any such violation has occurred.
3. *Other Remedies.* The city, any individual aggrieved by a violation of this section, or any entity the members of which have been aggrieved by a violation of this section, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this section and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.
4. *Nonexclusive Remedies and Penalties*. The remedies provided in this section are not exclusive, and nothing in this section shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

(Ord. #2002-13, §8; Ord. #2003-8, §6)

**28-1.9 Effect.**

Nothing in this Living Wage Ordinance shall be deemed to nor shall be applied in such a manner so as to have a constitutionally prohibited effect as an ex post facto law or impairment of an existing contract within the meaning of New Mexico Constitution, Article II, §19. (Ord. #2002-13, §9)

**28-1.10 Severability.**

The requirements and provisions of this section and their parts, subparts and clauses are severable. In the event that any requirement, provision, part, subpart or clause of this section, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the governing body that the remainder of the section be enforced to the maximum extent possible consistent with the governing body's purpose of ensuring a living wage for persons covered by the section. (Ord. #2002-13, §10; Ord. #2003-8, §7)

**28-1.11 Notice; Posting; and Publication.**

Any business subject to the provisions of this section shall as a condition to obtaining and holding a city of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this section and in particular post the text of subsections 28-1.5, 28-1.6 and 28-1.8 SFCC 1987. Failure to comply with this subsection shall be construed a violation of this section and, in addition, shall be considered grounds for suspension, revocation, or termination of the business license or registration. (Ord. #2003-8, §8)

**28-1.12 Living Wage Review.**

The city shall conduct a review of this section on or before July 1, 2005. In conducting said review the governing body may, at its discretion and pursuant to a duly-adopted resolution, appoint an ad hoc committee to advise and assist in making recommendations regarding this section and to investigate the economic and social effects of this section on Santa Fe. The city will contract with an independent third party to develop an evaluation that will generate objective measures on the effect of the Living Wage Ordinance on the health, security, and livelihood of Santa Feans by March 31, 2003. Data necessary for such an evaluation on Santa Fe city businesses will be compiled and presented to the governing body for their review on or before July 1, 2003. In compiling the data, consideration should be given to potential impacts on youth employment and possible recommendations that might prevent unforeseen consequences hurting children in the community. (Ord. #2003-8, §9)

CHAPTER XXVIII WAGE REQUIREMENTS

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**Attachment M - City of Santa Fe Information Technology Agreement**

*This Attachment is being provided to Vendors for reference, in accordance with Section 5.1 of the RFP.*

**REQUEST FOR PROPOSALS ONLY**

**City of Santa Fe**

Information Technology Agreement

Contract No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THIS Information Technology Agreement (“Agreement” or “Contract”) 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 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; and

[**CHOICE #1** - If procurement method is a RFP or Sole Source, use the following language: WHEREAS, all terms and conditions of the [**RFP Number and Name**] [**SOLE SOURCE**] and the Contractor’s response to such document(s) are incorporated herein by reference; and]

[**CHOICE #2** – If procurement method is a state price agreement, use the following language: “WHEREAS, this Agreement is issued against the state price agreement, established and maintained by the New Mexico State Purchasing Division of the General Services Department, SPD [**Insert state price agreement number and name**], and through this language hereby incorporates this price agreement by reference and gives the price agreement’s terms and conditions precedence over the terms and conditions contained in this present Agreement;”]

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

**ARTICLE 1 – DEFINITIONS**

1. “Acceptance” or “Accepted” shall mean the approval, after Quality Assurance, of all Deliverables by the IT Director of the City.

B. “Application Deployment Package” shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.

C. “Business Days” shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.

D. “Change Request” shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.

E. “IT Director” shall mean the Information Technology Director for the City.

F. “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the City as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the City, the pricing, payments, and terms and conditions of this Agreement, and (6) City information that is utilized, received, or maintained by the City, the Contractor for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

G. “Contract Manager” shall mean a Qualified person from the IT Department responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be [**Insert Name**] or his/her Designated Representative.

H. “Default” or “Breach” shall mean a violation of this Agreement by either failing to perform one’s own contractual obligations or by interfering with another Party’s performance of its obligations.

I. “Deliverable” shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

J. “Designated Representative” shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.

K. “DoIT” shall mean the Department of Information Technology.

L. "DFA" shall mean the Department of Finance and Administration;

M. “Escrow” shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the City receives the legal document, in this case, Source Code.

N. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.

O. “GRT” shall mean New Mexico gross receipts tax.

P. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

Q. “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.

R. “Know How” shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

S. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

T. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.

U. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the IT Director and verified by the City. If applicable, under the terms of this Agreement the Project is [Insert **Name of Project**, if applicable; otherwise delete sentence].

V. “Project Manager” shall mean a Qualified person from the City responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be [**Insert Name**] or his/her Designated Representative.

W. “Qualified” means demonstrated experience performing activities and tasks with Projects.

X. “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.

Y. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.

Z. "City Purchasing Agent (CPA)" shall mean the City Purchasing Agent for the City or his/her Designated Representative.

AA. “City Purchasing Department (SPD)” shall mean the City Purchasing Department of the City.

BB. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.

CC. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.

DD. “Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.

EE. “Turnover Plan” means the written plan developed by the Contractor and approved by the City in the event that the work described in this Agreement transfers to another vendor or the City.

EF. “Implementation Services” means services related to system implementation, configuration, data conversion, customization, and training.

**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.

1. Performance Measures. The Contractor shall substantially perform to the satisfaction of the City 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 or Article 16.
2. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the City without prior written approval, through the Amendment process, as defined in Article 25.
3. License. [**CHOICE #1** – If a software license is required, use the following language.] Contractor hereby grants the City a [**CHOICE #2**- If a perpetual license is required, use the following language] non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: [Insert name of software and patent number if applicable]

[**CHOICE #3**- If the license is required for the term of the Agreement, use the following language] non-exclusive, irrevocable, license to use, modify, and copy the [Insert name of Software and patent number if applicable] Software and any and all updates, corrections and revisions as defined in Article 2 and 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 kept current with the releases/versions of the software in live use at the City. 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 City 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 Software it provided the City; or, if this Agreement is terminated, or if the Contractor Breaches this Agreement, or if the Contractor is merged or acquired and no longer supports the Software, the Contractor shall make available to the City within thirty (30) calendar days of the date services cease: 1) the latest available Software program Source Code and related documentation meant for the Software provided or developed under this Agreement by the Contractor and listed as part of the Services; 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.

[**CHOICE #3 –** Not Applicable. The Parties agree there is no License.**]**

1. Source Code. [**CHOICE #1** – If for a maintenance and operations contract, use the following language.] The Contractor shall deliver any and all software developed as a result of maintenance releases by the Contractor. The Application Deployment Package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.

[**CHOICE #2 –** If Contractor will hold software in escrow, use the following language.] For each maintenance release, the Application Deployment Package shall be updated and shall be kept by an identified escrow agent at the Contractor’s expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the City. The escrow agent shall be responsible for storage and safekeeping of the storage media. The City shall be listed with said escrow agent as an authorized recipient of the storage media which shall contain the most recent application maintenance release deployment package.

[**CHOICE #3 –** If Contractor will not hold software in escrow, use the following language.] For each maintenance release, the Application Deployment Package shall be updated and shall be delivered to the City’s at the Contractor’s expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the City and shall be updated with each new application release deployment package at the Contractor’s expense.

[**CHOICE #4 –** Not Applicable. The Parties agree there is no Source Code.]

1. The City’s Rights.
2. Rights to Software. [**CHOICE #1** – If the City has right to the Software, use the following language. - The City will own all right, title, and interest in and to the City’s Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the City, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.] [**CHOICE #2 –** Not Applicable. The Parties agree the City does not have rights to the Software.]
3. Proprietary Rights. The Contractor will reproduce and include the City’s copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
4. Rights to Data. [**CHOICE #1** – If the City has right to the data, use the following language - Any and all data stored on the Contractor’s servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the City. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the City’s data in any manner, or provide to any entity or person outside of the City without the express written authorization of the City. [**CHOICE #2 –** Not Applicable. The Parties agree the City does not have rights to the data.]

**ARTICLE 3 - COMPENSATION**

A. Compensation Schedule. For Implementation Services, the City shall pay to the Contractor a not to exceed price for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D. All travel expense costs shall be included in the not to exceed price. The City will not make a separate payment for reimbursable expenses.

B. Payment. The total compensation under this Agreement shall not exceed [**Insert Dollar Amount**] [**CHOICE #1**- excluding New Mexico gross receipts tax. **CHOICE #2** - including New Mexico gross receipts tax.] This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

[Use if a state price agreement is the procurement method] Contractor hereby agrees to perform work at or below the published maximum rates of the statewide price agreement as follows:

* + [Insert professional service category(s) and define rate(s).]

Payment for Implementation Services shall be made upon Acceptance of each Deliverable according to Article 4 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 if Agreement is between two public entities - Not Applicable - contract is between two public entities.]

[**CHOICE #2** – The Contractor [Use either - shall OR shall not] be reimbursed by the City for applicable New Mexico gross receipts taxes, excluding 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. [**CHOICE #1** - The City shall retain 15% of the not to exceed Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.]

E. Performance Bond. [**CHOICE #1**- If the amount of the Agreement exceeds $1Million OR, if the Agreement is for custom developed software/application, OR Commercial Off the Shelf (COTS) software with greater than 20% Enhancement, OR for any other critical project execution concerns, use the following language.] Contractor shall execute and deliver to City, contemporaneously with the execution of this Agreement, a Performance Bond in the amount of [**Insert Total Amount** of agreed upon Performance Bond] in the name of the City. The Performance Bond shall be in effect for the duration of this Agreement and any renewals thereof. The required Performance Bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The City’s right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor as a result of Contractor’s failure to perform.

[**CHOICE #2 –** Not Applicable. The Parties agree there is no Performance Bond.]

**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 City. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).

B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the IT Director 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 IT Director. In order to Accept the Deliverable, the IT Director, 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 [**CHOICE #1**- **RFP**] [**CHOICE #2** – **state price agreement**] [**CHOICE #3** - **Sole Source**] [**CHOICE #4** – **other procurement method of (please specify**)];

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 IT Director or their Designated Representative, the IT Director will notify the Contractor of Acceptance, in writing, within [INSERT # of days - recommend at not less than fifteen (15)] Business Days from the date the IT Director receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the IT Director gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the IT Director receives the Deliverable(s) and accompanying Payment Invoice, the IT Director 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 IT Director with all appropriate corrections or modifications made and/or addressed. The IT Director 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 IT Director. 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**

[**CHOICE #1**- If the Agreement is based on a state price agreement and is for professional services *only* OR it is for a combination of professional services and tangible property/services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY.

[**CHOICE #2**- If the Agreement is based on a state price agreement and is only for tangible property and/or services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY.

[**CHOICE #3**- If the Agreement is NOT based on a state price agreement and is for professional services only, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY.

[**CHOICE #4**- If the Agreement is NOT based on a state price agreement and is for only tangible property and *does not include* professional services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY.

[**CHOICE #5**- If the Agreement is NOT based on a state price agreement and is for *both* professional services and tangible property/services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE CITY.

This Agreement shall terminate on September 1, 20\_\_\_\_ or upon completion of the services covered herein, whichever occurs first, unless terminated pursuant to Article 6.  The contract term, including extensions and renewals, shall not exceed eight (8) years, except as set forth in Section 13-1-150 NMSA 1978.

**ARTICLE 6 – TERMINATION**

1. Grounds. The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City’s uncured, material breach of this Agreement.
2. 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, or the City Council 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.
3. Notice; City Opportunity to Cure.
   1. Except as otherwise provided in Paragraph (3), the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
   2. Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City’s material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
   3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 5, “Appropriations”, of this Agreement.
4. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

**ARTICLE 7 – TERMINATION MANAGEMENT**

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

1. Transfer, deliver, and/or make readily available to the 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’s programs;

7. In the event that this Agreement is terminated due to the Contractor’s course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the City’s receipt of program funds from any governmental City, 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 develop and submit to the City for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor’s policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the City and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the 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 City, 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. [Delete if the Agreement is between two public entities - The Contractor shall defend, indemnify and hold harmless the City, and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the City.]

[Use if the Agreement is between two public entities - Neither party shall be responsible for liability incurred as a result of the other Party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.]

B. [Delete if the Agreement is between two public entities - 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**

[**CHOICE #1** – If purchasing only IT hardware/equipment, use the following language - Not Applicable. The Parties agree there is no Intellectual Property.]

A. Ownership. [**CHOICE #2** - Use this provision if City is to own the Intellectual Property] 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 or Know How 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.

[**CHOICE #3**- If the Contractor will own the Intellectual Property then delete the above language and insert the following language.] Contractor hereby acknowledges and grants to the City, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

**ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION**

1. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney’s fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the 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; 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 Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor’s official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software.[**CHOICE #1**- Use if only purchasing or developing 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 [INSERT # of years - recommend 6mo.-2yrs.] years after Acceptance by the IT Director 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. [**CHOICE #2 –** Not Applicable. The Parties agree there is no Software.**]**

**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**

[**CHOICE #1**- Use if only purchasing IT hardware/equipment - Not Applicable.]

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of 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 IT Director. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in Exhibit A;

2. Due date of any Deliverable, as outlined in Exhibit A;

3. Compensation of any Deliverable, as outlined in Exhibit A;

4. Agreement compensation, as outlined in Article 3; or

5. Agreement termination, as outlined in Article 5.

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

1. The Project Manager shall draft a written Change Request for review and approval by the IT Director to include:

(a) the name of the person requesting the change;

(b) a summary of the required change;

(c) the start date for the change;

(d) the reason and necessity for change;

(e) the elements to be altered; and

(f) the impact of the change.

2. The IT Director shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the IT Director are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

**ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION**

A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:

1. Providing the Project documentation;

2. Allowing the IV&V vendor to sit in on the Project meetings; and

3. Supplying the IV&V vendor with any other material as directed by the Project Manager.

B. If this Agreement is for IV&V professional Services then the Contractor agrees to:

1. Submit all reports directly to the Department of Information Technology, Project Oversight and Compliance Division ([ivandv.reports@state.nm.us](mailto:ivandv.reports@state.nm.us)) according to the DoIT IV&V Reporting Template and Guidelines found on the DoIT website, <http://www.doit.state.nm.us/project_templates.html>, and copy the City.

2. Use a report format consistent with the current DoIT IV&V Reporting Template and Guidelines found on the DoIT website, <http://www.doit.state.nm.us/project_templates.html>.

**ARTICLE 16 – DEFAULT/BREACH**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, 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 at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the City to any equipment or its installation or for losses caused by the City’s fault or negligence. Nothing in this Agreement shall limit the Contractor’s liability, if any, to third parties and/or employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

**ARTICLE 19 – ASSIGNMENT**

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

**ARTICLE 20 – SUBCONTRACTING**

A. General Provision. 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.

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

**ARTICLE 21 – RELEASE**

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

**ARTICLE 22 – CONFIDENTIALITY**

Any Confidential Information provided to the Contractor by the City or, developed by the Contractor based on information provided by the City 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 Information 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**

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement’s term and effect and retain them for a period of [Insert # of years, minimum is - 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. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;

2. Due Date of any Deliverable, as outlined in Exhibit A;

3. Compensation of any Deliverable, as outlined in Exhibit A;

4. Agreement Compensation, as outlined in Article 3; or

5. Agreement termination, as outlined in Article 5.

**ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000.

**ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING**

A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the City, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

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

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or City 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

City Name

E-mail Address

Telephone Number

Mailing Address.]

**For CONTRACTOR**

[Insert Name of Individual, Position,

Company Name,

E-mail Address,

Telephone Number,

Mailing Address.]

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

**ARTICLE 30 – GENERAL PROVISIONS**

1. The Contractor agrees to abide by all federal and state laws and City ordinances, including but not limited to:
   1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
   2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and City Ordinances, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
   3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.
   4. Americans with Disabilities Act. The Contractor agrees to comply with the Americans with Disabilities Act Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The Contractor agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney’s fees, and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Contractor.
   5. City Code of Conduct. The Contractor shall, as a condition of being awarded this Agreement, to require each of its agents, officers and employees to abide by the City’s policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Agreement. The Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City.
2. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
3. 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.
4. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

**ARTICLE 31 – SURVIVAL**

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement. [**Choice #1** – Other unexpired agreements, promises, or warranties that will survive the termination of this Agreement are: (list here)]

**ARTICLE 32 – TIME**

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

**ARTICLE 33 – FORCE MAJEURE**

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**[IF APPLICABLE, ADD ANY CITY SPECIFIC, GRANT SPECIFIC, OR CONTRACT SPECIFIC ARTICLES STARTING AT THIS POINT.]**

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: CONTRACTOR:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JAVIER M. GONZALES, MAYOR NAME AND TITLE

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

CRS#\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City of Santa Fe Business

Registration # \_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

YOLANDA Y. VIGIL

CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OSCAR RODRIGUEZ

FINANCE DIRECTOR

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Business Unit Line Item

**EXHIBIT A – SCOPE OF WORK**

1. Purpose of the Agreement including goals and objectives:

[If applicable – **Certified Project Name: name**]

1. Performance Measures:
2. Activities.
3. Deliverables

The following sections describe the required tasks and subtasks to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task and/or subtask, but is not limited to performing only the identified task or sub tasks in a given project area. The Parties hereby agree that the Deliverable(s) are the controlling items and that the Contractor’s obligation is to perform and deliver the Deliverable as described in the following sections.

**[Deliverable samples are provided, but are only samples; the City is to add Deliverables that represent the work that needs to be performed and are traceable by the City. The City may identify as many Deliverables, with associated tasks and subtasks, as are needed to accomplish the Project goals, objectives, and activities.]**

**A. Sample Deliverable Number 1 [Insert Name of Deliverable]**

|  |  |  |
| --- | --- | --- |
| **Deliverable Name** | **Due Date** | **Compensation** |
| [Insert Name of Deliverable] | [Insert Date this Deliverable is due] | * [Insert Total $ Amount] * [Insert Amount less GRT, if applicable] * [Insert $ Amount less retainage, if applicable] |

|  |  |  |
| --- | --- | --- |
| Task Item | Sub Tasks | Description |
| **[Insert Name of Task or tasks to be performed for each Deliverable.** | **Sub 1 (through however many subtasks are needed to accomplish Task 1 which leads to the number of Tasks needed to accomplish Deliverable 1.** | * [Insert Description] Please use active verbs to identify tasks and subtasks to be performed by the vendor. * The due dates for the tasks and/or subtasks should be included as a means of assisting the City and Contractor to monitor contract progress. * Compensation amounts for tasks and/or subtasks can be identified here. The total amount paid for all tasks and/or subtasks performed under this Deliverable should be consistent with the Compensation due for total delivery of the Deliverable. * The Contractor will bill the City per Deliverable; clear and well defined language will assist the City and Contractor in determining if the Deliverable is met for payment purposes. |

**A. Deliverable Number n – [Insert name of support Services.]**

|  |  |  |
| --- | --- | --- |
| **Deliverable Name** | **Due Date** | **Compensation** |
| [Insert Name of Deliverable] | [Choice #1 – Payment due at the start of the maintenance period  Choice #2 - Arrears payment due at the end of the month or quarter] | * [Insert Total $ Amount] * [Insert Amount less GRT, if applicable] * [Insert $ Amount less retainage, if applicable] |

|  |  |  |
| --- | --- | --- |
| Task Item | Sub Tasks | Description |
| **Problem Support** | **Sub 1** | The Contractor shall make technical support personnel available by phone and email on the following schedule: [Such as - Monday through Friday, 8:00A.M. To 5:00P.M., excluding state holidays.] |
| **Sub 2** | The Contractor will log requests and provide to the City technical support services for the Software based on the priority levels and problem resolution processes described in the Performance Measures, above. |
| **Sub 3** | The Contractor will update documentation (Systems Administration Guide, User Guide, and Product Manual) to reflect changes made to the system as a result of problem resolution. |
| **Sub 4** | The Contractor will respond to technical and functional questions about the [Insert Application Name]. Such requests will be assigned a default Priority of [Insert appropriate priority level] unless the City requests a higher priority be assigned to the request. |
| **Monthly Report** | **Sub 1** | The Contractor shall provide or make available online a monthly report on the activity and status of all logged requests received from the City. |
| **Activities Tracking** | **Sub 1** | Contractor shall maintain a log of requests in a City approved tracking system with a unique number assigned to each City request. The unique number shall be provided by the contractor to City for reference and communication. |
|  | **Sub 2** | The City will assign one of four levels of priority to each request:   * **Priority 1** is the most severe program error and represents a situation where mission critical features and functions of the **[name of application**] are unavailable and no practical alternate mode of operation is available. Priority 1 problems will be corrected or a solution will be provided by Contractor for corrective action within [modify as appropriate - **two (2) hours]**. * **Priority 2** indicates a problem in which certain features and functionality are not available and no practical alternate mode of operation is available. Priority 2 problems will be corrected or a plan will be provided by the Contractor for corrective action within [modify as appropriate - **one (1) Business Day(s)]**. * **Priority 3** is the normal “next-in-line” problem priority assignment. At this level, requests are worked on in the order in which they are received. Priority 3 problems will be corrected or a plan will be provided by Contractor for corrective action within [modify as appropriate - **ten (10) Business Days]**. * **Priority 4** is the Release assignment. At this level, requests are worked on as deemed appropriate by City. Priority 4 issues will be incorporated into specific releases, documented in an Application Deployment Package, which will be scheduled for delivery at the discretion of the City after time and cost estimates are provided by the Contractor and approved by the City, if applicable. As such, priority 4 issues will be due at the time the specific Release is delivered. |