

EC-20-174



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

September 28, 2020

TO: Patrick Davis, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK', is written over the name 'Timothy M. Keller'.

SUBJECT: Approval of the Second Supplemental Agreement with WindFire Production Services

Attached for consideration and approval is the Second Supplemental Agreement with WindFire Production Services. The purpose of this contract is to provide Programming Services for Public Access Television and Operation of Digital Media Training Services for the Media Resources Division of The Cultural Services Department (CSD).

CSD currently has a professional/technical contract with WindFire Production Services. The original Agreement was for Eighty Thousand dollars (\$80,000) in January 2020, and increased by Twenty Thousand dollars (\$20,000) with a First Supplemental Agreement in July 2020. This Second Supplemental Agreement adds One Hundred Sixty Thousand dollars (\$160,000.00).

The contract in total will be Two Hundred Sixty Thousand dollars (\$260,000), with an option to extend the contract for up to two (2) additional one (1) year periods, dependent on CSD's needs.


This request provides the approval pursuant to § 5-5-19, Approval of Contracts, ROA 1994 of the City's Public Purchasing Ordinance, which requires City Council approval on contracts exceeding the \$100,000 threshold.

I am forwarding this Supplemental Agreement for your consideration and action.

Approval of the Second Supplemental Agreement with WindFire Production Services

Approved:

Approved as to Legal Form:



Sarita Nair
Chief Administrative Officer

10/1/20
Date

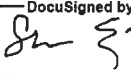
DocuSigned by:
Esteban A. Aguilar 9/29/2020 | 10:02 AM MDT
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Esteban A. Aguilar, Jr.
City Attorney

Date

DS
LB

Recommended:

DocuSigned by:


Dr. Shelle Sanchez
Director – Cultural Services Department

9/28/2020 | 6:34 PM MDT
Date

Cover Analysis

1. What is it?

Approval of the Second Supplemental Agreement to add monies for Programming Services for Public Access Television and Operation of Digital Media Training Services provided by WindFire Production Services for the Cultural Service Department (CSD), City of Albuquerque.

2. What will this piece of legislation do?

This piece of legislation provides the approval pursuant to § 5-5-19, Approval of Contracts, ROA 1994 of the City's Public Purchasing Ordinance and allows the continuation of programming services and digital media training services for Media Resources, a division of CSD. This will authorize CSD to increase the contract with WindFire Production Services by an additional \$160,000, and provide for future extensions of the agreement for up to two (2) additional one (1) year periods.

3. Why is this project needed?

In 1986, the Albuquerque City Council approved the establishment and support for public access cable television channels. The cable television franchise ordinance between the City of Albuquerque”) and the local cable television provider, Ordinance 13-5-3 et seq., R.O.A. 1994, requires channel availability for public, educational, and governmental access. The City desires to adapt the mission of access television to these evolving technologies and resulting community needs, such as “bridging the digital divide,” while retaining the foundational public service for free speech.

4. How much will it cost and what is the funding source?

The contract will in total be Two Hundred Sixty Thousand and No/100 (\$260,000.00). The original Agreement was for Eighty Thousand dollars (\$80,000) in January 2020, and increased by Twenty Thousand dollars (\$20,000) with a First Supplemental Agreement in July 2020. This Second Supplemental Agreement adds One Hundred Sixty Thousand dollars (\$160,000.00). Funding for this Supplemental Agreement will come from the existing operating budget of the Media Resources division of CSD.

5. Is there a revenue source associated with this Plan? If so, what level of income is projected?

N/A

SECOND SUPPLEMENTAL AGREEMENT

THIS SECOND SUPPLEMENTAL AGREEMENT is made and entered into this _____ day of _____, _____, by and between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and WindFire Production Services, 6704 Tesuque NW, Albuquerque, NM 87120 ("Contractor").

RECITALS

WHEREAS, the City and the Contractor entered into an Agreement, dated January 16, 2020, whereby the Contractor agreed to render certain professional services to the City ("Original Agreement"); and

WHEREAS, the City and the Contractor entered into the First Supplemental Agreement on July 1, 2020 (the Original Agreement and the First Supplemental Agreement shall collectively be referred to herein as the Agreement); and

WHEREAS, the City has determined that it would like to extend that agreement; and

WHEREAS, the Contractor is agreeable.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Section 2 of the Agreement is hereby amended to read as follows:

Time of Performance. Services of the Contractor shall commence upon execution of Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by June 30, 2021. This Agreement may be extended for two (2) additional one (1) year periods by mutual agreement upon the same terms and conditions as herein contained. The Parties also agree that prior to expiration of this Agreement, the City may issue a request for proposals or quotes for the same or similar services as those covered by this Agreement.

2. Section 3A of the Agreement is hereby amended to read as follows:

A. Compensation. For performing the Services as specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of Two Hundred Sixty Thousand and No/100 (\$260,000.00), which amount is comprised of the Original Agreement amount of Eighty Thousand and No/100 Dollars (\$80,000.00), plus the amount of Twenty Thousand Dollars and No/100 (\$20,000.00) added in the first Supplemental Agreement and the amount of One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00) added in this Second Supplemental Agreement.

Such total amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services.

3. Section 3B of the Agreement is hereby amended to read as follows:

B. Method of Payment. Such amount shall be payable monthly in equal payments of up to Thirteen Thousand Three Hundred Thirty Three and No/100 Dollars (\$13,333.00), which rate includes any applicable gross receipt taxes, for completed Services and upon receipt by the City of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

4. The following paragraphs should be added as the last paragraph, 29 and 30, of the Agreement:

29. **Electronic Signatures** The parties agree that this Agreement may electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

30. **Force Majeure**. The City shall not be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of the City which would render such performance impossible or hazardous. Such causes include, but are not restricted to, acts of God or the public enemy, acts of State or Federal governments, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above (hereinafter "Force Majeure Event"). If a Force Majeure Event causes any failure to perform, the City shall promptly inform the Business in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested. The parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by the City as a result thereof. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

5. Except as herein expressly amended, the terms and condition of the Agreement shall remain unchanged and shall continue in full force and effect unless there is a conflict between the terms and conditions of the Agreement and this Second Supplemental Agreement, in which event, the terms and conditions of the Second Supplemental Agreement shall control.

6. This agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this agreement.

FISCAL IMPACT ANALYSIS

TITLE: **Approval of the Second Supplemental Agreement with WindFire Production Services** R: O:
 FUND: General Fund 110
 DEPT: Cultural Services - Media Resources

- [X] No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- [] (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2019	Fiscal Years 2020	2021	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[X] Estimated revenues not affected				
[] Estimated revenue impact				0
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

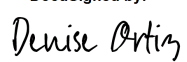
These estimates do not include any adjustment for inflation.
 * Range if not easily quantifiable.

Number of Positions created

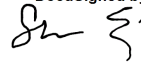
COMMENTS: FY 2021 Appropriation for Media Resources (Program 2300001, Dept ID 2328000) includes funding for this Supplemental Agreement. No additional appropriation of funds will be required to support this request.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

DocuSigned by:

 Denise Ortiz 9/28/2020 | 5:21 PM MDT
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 FISCAL ANALYST

APPROVED:

DocuSigned by:

 9/28/2020 | 6:34 PM MDT
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 DIRECTOR (date)

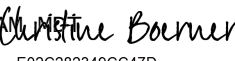
REVIEWED BY:

DocuSigned by:

 Emma Romero 9/29/2020 | 8:51 AM MDT
66043E89536C48D
 EXECUTIVE BUDGET ANALYST (date)

DocuSigned by:

 Lawrence L. Davis 9/29/2020 | 9:46 AM MDT
BD22ED7BFD9344E
 BUDGET OFFICER (date)

DocuSigned by:

 Christine Boerner 9/29/2020 | 9:50 AM MDT
E02C2823496C47D
 CITY ECONOMIST (date)