

**Henry P. Roybal**  
*Commissioner, District 1*

**Anna Hansen**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Anna T. Hamilton**  
*Commissioner, District 4*

**Ed Moreno**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**DATE:** *November 30, 2017*

**TO:** *Board of County Commissioners*

**FROM:** *Bill Taylor, Purchasing Manager* 

**VIA:** *Katherine Miller, County Manager*  
*Stephanie Schardin Clarke, Finance Director*  
*Pablo Sedillo, Director, Public Safety Director*

**ITEM AND ISSUE:** *BCC Meeting December 12, 2017*

**Request Approval of Amendment No. 1 to Agreement No. 2017-0154-CORR/IC with BI Incorporated to Extend the Term and Increase Compensation Payable to the Contractor for Electronic Monitoring Services for a Total Contract Amount of \$940,000.00 exclusive of GRT and Grant Signature Authority to the County Manager to Sign the Purchase Order. (Bill Taylor, Purchasing Division)**

### **SUMMARY:**

The Purchasing Division and the Corrections Department requests approval of Amendment No. 1 to Agreement No. 2017-0154-CORR/IC with BI Incorporated to increase compensation to the Contractor by \$50,000 for the remainder of the current term expiring January 31, 2018 and exercise the County's option to extend the Agreement an additional 1 year term from January 31, 2018 to January 31, 2019 and add compensation for that term in the amount of \$470,000 for total Agreement not to exceed amount of \$940,000 exclusive of GRT for electronic monitoring services.

### **BACKGROUND:**

Santa Fe County Corrections Department offers electronic monitoring services for those Santa Fe County residents who are court-ordered to be monitored electronically while on probation, prior to being adjudicate, or while nearing the end of a minor drug, alcohol, or misdemeanor sentence. Participants may also include juveniles and first-time misdemeanor offenders. The program offers an alternative to incarceration and assists in alleviating over-population at the jail. There is also substantial savings and decreased liability when compared to housing offenders in a jail setting.

Pursuant to NMSA1978, 13-129 A.1, Santa Fe County entered into Agreement No. 2017-0154-CORR/IC on January 31, 2017 with BI Incorporated to provide the required electronic monitoring services. This Agreement mirrors the General Services Administration (GSA) contract GS-07F-

0518N inclusive of Santa Fe County terms and conditions and allows the County to renew the term of agreement annually, not to exceed a total of 4 years.

**ACTION REQUESTED:**

The Purchasing Division requests approval of Amendment No. 1 to Agreement No. 2017-0154-CORR/IC with BI Technologies, Inc. to provide electronic monitoring services and grant signature authority to the County Manager to sign the purchase order.

**AMENDMENT NO. 1  
TO PROFESSIONAL SERVICES AGREEMENT  
WITH BI INCORPORATED  
TO PROVIDE ELECTRONIC MONITORING SERVICES**

**THIS AMENDMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **BI Incorporated**, whose principal address is 6400 Lookout Road, Boulder CO 80301 hereinafter referred to as the "Contractor."

**WHEREAS**, the County and the Contractor entered into Agreement No. 2017-0154-CORR/IC (Agreement) dated January 31, 2017, to provide electronic monitoring services for the Santa Fe County Corrections Department; and

**WHEREAS**, according to Section 15 (No Oral Modification; Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties; and

**WHEREAS**, the County wishes to increase compensation payable to the Contractor for the term of January 31, 2017 to January 31, 2018 by \$50,000.00 for a not to exceed amount of \$470,000.00 exclusive of New Mexico gross receipts tax; and

**WHEREAS**, the parties wish to amend the Agreement to extend the term from January 31, 2018 to January 31, 2019 and increased compensation payable to the Contractor for this term by \$470,000.00 for a total not to exceed amount of \$940,000.00 exclusive of New Mexico gross receipts tax.

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

1. Section 2 (Compensation, Invoicing and Set-Off), subparagraph A.2: the words "four hundred twenty thousand dollars (\$420,000)" are delated and replaced with "\$470,000.00".
2. Section 2 (Compensation, Invoicing and Set-Off), subparagraph A.2. a new subparagraph "a" is inserted to read as follows:
  - a. Pursuant to Amendment No. 1 to this Agreement, the total amount payable to the Contractor for the term of January 31, 2017 to January 31, 2018 shall not exceed \$470,000.00, exclusive of NM gross receipts tax. The total amount payable to the Contractor under this Agreement shall not exceed \$940,000.00 exclusive of New Mexico gross receipts tax.
3. Section 3 (Effective Date and Term) is amended by inserting a subparagraph "a" to read as follows:

a. By Amendment No. 1 to this Agreement, the County exercised its option to extend the term of this Agreement. The term of this Agreement is extended from January 31, 2018 to January 31, 2019.

4. All other provisions of the Agreement not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment as of the date of the last signature below.

**SANTA FE COUNTY:**

\_\_\_\_\_  
Henry P. Roybal, Chair  
Santa Fe County Board of County Commissioners

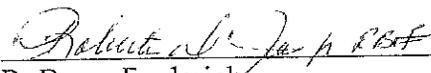
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Date

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar,  
Santa Fe County Clerk

\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
R. Bruce Frederick  
Santa Fe County Attorney

11-30-17  
Date

Finance Department:

  
\_\_\_\_\_  
Stephanie Schardin Clarke  
Santa Fe County Finance Director

12/1/17  
Date

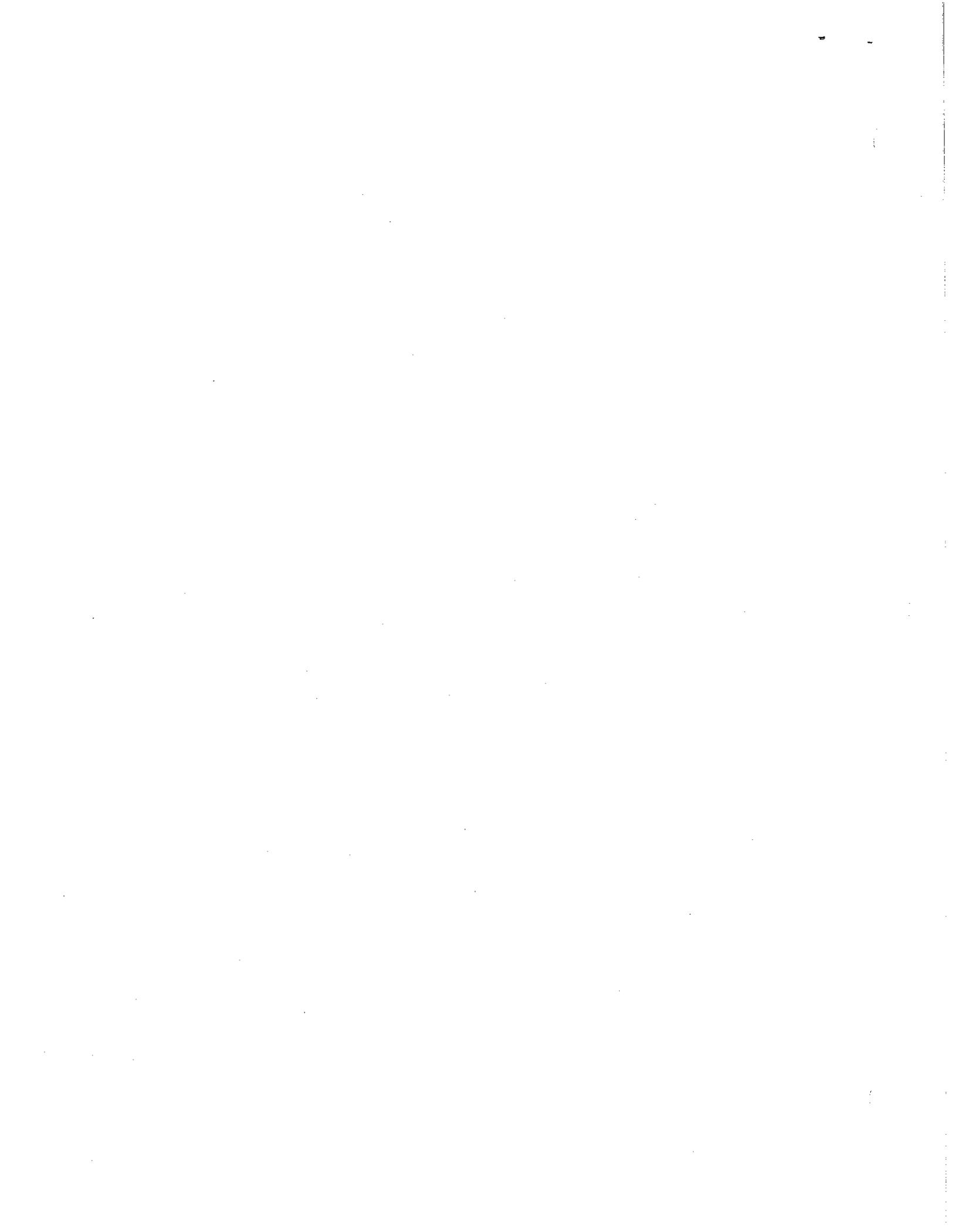
CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Print Title)



**PROFESSIONAL SERVICES AGREEMENT  
WITH BI, INCORPORATED  
TO PROVIDE ELECTRONIC MONITORING SERVICES**

THIS AGREEMENT is made and entered into on this 31<sup>st</sup> day of January, 2017, by and between SANTA FE COUNTY (hereinafter referred to as the "County"), an New Mexico political subdivision, and BI, INCORPORATED, with a principal address located at 6400 Lookout Road, Boulder, Colorado 80301, (hereinafter referred to as the "Contractor").

WHEREAS, the Santa Fe County Corrections Department requires electronic monitoring services for those Santa Fe County residents who are court-ordered to be monitored electronically while on probation, prior to being adjudicated, or while nearing the end of a minor drug, alcohol, or misdemeanor sentence. Participants may also include juveniles and first-time misdemeanor offenders;

WHEREAS, pursuant to Section 13-1-129 NMSA 1978, the County wishes to utilize the federal supply contract (GSA) GS-07F-0518N for Electronic Monitoring services for the Santa Fe County Corrections Department; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and extend the price and terms and conditions of the GSA contract to the County and both parties wish to enter into this Agreement.

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

**I. SCOPE OF WORK**

**A. The Contractor shall:**

- a) Provide an electronic monitoring system which will monitor, check and verify a person's presence or absence at a particular location during specified time periods.
- b) Report unauthorized absences, late returns, equipment malfunctions and tampering to a central computer system that will alert the Corrections Department of such occurrences.
- c) Provide a breath alcohol and/or transdermal alcohol monitoring system which detects the presence of alcohol consumed by offenders
- d) Report the presence of alcohol, equipment malfunctions and tampering to a central computer system that will alert the Corrections Department of such occurrences.

- e) Supply a system with continuous signaling, RF and GPS based transmitter and receiver monitoring, random calling monitoring capability, text messaging, beeper, fax, email, and/or telephone notification capability.
- f) Provide a system that utilizes RF land line and/or GPS equipment to communicate between individual transmitters/receivers and the central computer. All monitoring equipment and accessories will be specifically designed for electronic monitoring house arrest and alcohol monitoring and will not be an adaptation of readily and commercially available products.
- g) Supply monitoring equipment that can be easily attached to each offender, and easily installed on a land or cellular line.
- h) Provide a central computer system located at a secure facility, capable of receiving, storing and disseminating the data generated by the monitoring equipment. It will also provide a reliable and secure means of transmitting data between the central computer and the offender's monitoring equipment.
- i) Provide staffing at its monitoring center to continuously monitor the computer system twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year in order to promptly detect unauthorized absences, late arrivals, alcohol violations, equipment malfunctions and tampering, and to respond promptly to inquiries from the Corrections Department.
- j) Provide all necessary on-site training and manuals for equipment and systems operations, as well as on-going support to Corrections Department employees and follow-up training and support as requested.
- k) Maintain equipment and inventory in proper working condition.
- l) Inform the County of new technologies and equipment as it becomes available on the market.

## B. CONTRACTOR'S EQUIPMENT

Contractor's equipment must meet the following minimum specifications.

- a) Central computer system-The central computer system shall be capable of automatically initiating and receiving alerts to/from the offender's location to communicate with the offender and the monitoring equipment.
  - i. The computer system will be located at a secure office location.
  - ii. The computer system will have an uninterruptible back up power-supply, which will enable the computer to continue running in the event of a power outage. (Indicate memory loss that occurs).

- iii. The system will provide for an orderly back up of data on (at least) on a daily basis to prevent data loss due to system failure.
- iv. The computer system will be capable of continuously initiating, receiving and storing all alerts, breath analysis results and voice responses of the offender and data sent by the receiver dialer, together with the date and time of each occurrence. All voice responses will be permanently recorded on tape for later playback and analysis for substance abuse, unusual responses and additional identification. All data shall be continuously stored electronically, printed out on line in real time and later shall be printable in various report formats as required.
- v. The computer system will have the ability to perform random calling within at least six (6) different curfew periods per day on a customized schedule for each offender. In the event an offender's unauthorized absence is reported by the RF and/or GPS portion of the system, the computer system must have an automatic call back feature and provide immediate 100% accurate verification that the offender is or is not present.
- vi. The computer system will be capable of retaining relevant information for each offender, including name, address, phone number, equipment serial numbers, case name, and other pertinent information.
- vii. The computer system will have an alert system so that the Offeror's monitoring center will notify the Corrections Department by text messaging, telephone, beeper, email, fax of any unauthorized absences, late arrivals, equipment malfunctions or tampering upon its occurrence indicating the offender's name or unit number and violation type as agreed to and arranged by the Corrections Department.

b) Transmitter worn by offender

- i. The transmitter must be small, lightweight and easily installed on the offender's ankle or wrist with minimal training and experience of the installer.
- ii. The transmitter must comply with all applicable Federal Communications Commission (FCC) rules and regulations and must be registered with the FCC.
- iii. The transmitter will send an individually coded signal that has a range of approximately 150 feet.
- iv. The transmitter must be shock resistant, water and moisture proof, and function reliably under normal atmospheric and environmental conditions.
- v. The transmitter must not pose a safety hazard or unduly restrict the activities of the offender.
- vi. The transmitter and band must be hypoallergenic.
- vii. The transmitter must be field programmable.

- viii. The transmitter will have a totally passive offender's identifier unit which will be used to automatically, immediately and accurately confirm its presence when a telephone call to the location is initiated by the central computer system.
- ix. The transmitter will be battery powered and have a one (1) year minimum continuous operating life without need for battery recharging or replacement.
- x. Transmitter operating RF and/or GPS shall not interfere with or be interfered with by use of radio transmitters normally used by police/corrections officials, electronic security systems, or other radio devices.
- xi. The transmitter coded radio signal will not be the same as any commercially available product and will be designed to discourage tracing and duplication of the signal by an offender or an accomplice.
- xii. The batteries powering the transmitter will be easily replaced in the field and will not require replacement of either the transmitter or the receiver/monitor in the home.
- xiii. The strap and any required fasteners must not be available to the general public either commercially or through any mail order outlet.
- xiv. The transmitter must be capable of being securely attached to the offender in such a manner in which efforts to tamper with or remove the device are detectable, and the strap and circuitry within the transmitter must enable the transmitter to immediately notify the central computer (when in range of the receiver) of any tamper attempt or removal from the offender. This would include severing the strap or removal of the transmitter without severing the strap.
- xv. Tamper Resistant Features
  - The transmitter must transmit a specific "Tamper" signal immediately when it has been tampered with.
  - If tampered with out of range of the receiver, the tamper signal will still be present and recorded by the receiver when the transmitter returns within range of the receiver. If GPS, the unit should call out tamper within five (5) minutes.
  - The tamper signal will continue to be transmitted to the central computer until reset by authorized agency personnel.

c) Receiver/Dialer/Monitor

- i. The receiver/dialer/monitor will comply with all applicable FCC rules including, but not limited to, 47 CFR Parts 15 and 68 and will be registered with the FCC. The contractor will provide the FCC registration number.

- ii. The receiver/dialer/monitor will be capable of being easily attached to the offender's telephone and telephone outlet using standard RJ11-C modular telephone connector jack or plug.
- iii. The receiver/dialer will accept and activate reporting activities only from the unique signal of the corresponding transmitter attached to that one offender.
- iv. The receiver/dialer will detect attempts to simulate or duplicate the offender's transmitter signal and immediately report this to the central computer system.
- v. The receiver/dialer will be powered by 100 volt AC line current, with an internal battery back-up capable of providing a minimum of 48 hours of continuous operating power in the event of a 110 AC power loss.
- vi. The receiver/dialer will contain an internal clock and a memory to store and time stamp data in the event that telephone communication with the central computer is disrupted.
- vii. The receiver/dialer will be capable of seizing a telephone line when not in use, and deliver courtesy "alert beeping tones" on a line in use; in order to initiate communications with the central computer system.
- viii. The receiver/dialer will be capable of receiving the radio signal from the offender's transmitter within the specified range of approximately 150 feet without undue obstruction from metallic objects or interference from household electronic equipment.
- ix. The receiver/dialer will not pose any health or safety hazard to the offender or others and shall function reliably under normal environmental and atmospheric conditions.
- x. Surge protectors will be built-in or provided for incoming power and telephone lines which are designed in accordance with the receiver/dialer's manufacturer's recommendations to be fully compatible with the proposed receiver/dialer equipment.
- xi. The receiver/dialer will be capable of being easily installed within 20 minutes or less on average and made operational by Corrections Officers, following the training and instructions provided by the Offeror.
- xii. The receiver/dialer will be able to detect the following events and immediately communicate them to the central computer with the time of occurrence:
  - arrival of transmitter within range of the receiver/dialer
  - departure of transmitter out of range of the receiver/dialer (subject to a present time interval)
  - cutting or removal of the transmitter attachment strap from the offender
  - loss or restoration of 110 AC power
  - tampering with receiver/dialer including attempts to gain unauthorized access to the internal mechanism

- disconnection and restoration of telephone service (disconnection must be communicated as soon as service is restored and any other alerts that occur during disconnection).
  - attempts to simulate or duplicate the radio signal by a device other than offender's own transmitter
- xiii. The receiver/dialer will automatically communicate with the central computer at preset intervals with a maximum of six hours or less, if no offender activity is detected. This will present status reports and indicates that it is connected and functioning properly.

d) Maintenance, Repair and Service

- i. Contractor will maintain all equipment and spares in good operating condition and will provide prompt repair, replacement and service.
- ii. Contractor will provide remote service and diagnostics from its service facility on the Corrections Department monitoring system as required while the system is in full monitoring operation.
- iii. Contractor will provide a free telephone hot line support/service center. Each service/support location must have the ability to electronically access the system for the purposes of performing remote diagnostics.
- iv. Contractor must be able to ship equipment within five days of request or within five days of promised delivery date. Contractor must be able to ship equipment overnight in emergency cases.
- v. The equipment must be under warranty and maintenance agreement with the manufacturer. The County must receive all revisions to equipment, as they become available, at no additional cost. Contractor must include warranty information in its response.
- vi. At no additional cost, the contractor shall supply a 20% spare level of equipment to be maintained at the County's office for use as immediate replacements, when needed.
- vii. Contractor must supply a reasonable amount of consumables, such as straps and batteries at no additional charge, while equipment is under a lease or maintenance contract.

C. CUSTOMER SUPPORT

Contractor shall supply an account manager who is trained, certified, and periodically re-certified by the Original Equipment Manufacturer (OEM) of the equipment provided for this program. The account manager will provide, at a minimum, the following services:

- i. Assistance with inventory management, including ordering, returning, and repairing/upgrading equipment. On-site initial

training and refresher training at local offices as requested by the County.

- ii. Trouble shooting assistance, including on-site installation assistance as requested by the County, and emergency on-site assistance
- iii. Liaison between the County and the monitoring center or internal account representative, engineering, corporate headquarters.

**D. CUSTOMER TRAINING**

Contractor must provide to County personnel, at no additional cost, all training necessary to implement and manage the program successfully. Training must include hands-on training and reference materials.

Contractor must provide initial field equipment training at County site, at no charge, along with follow up trainings as requested by Corrections staff. Regular software application trainings must be available via the Internet, and on-site if requested.

**E. INSURANCE REQUIREMENTS ON EQUIPMENT**

The contractor's equipment costs to County will include pricing for 100% insurance coverage for loss or missing equipment or the cost of repairs necessitated by County's negligence or the damage or destruction of the equipment by parties other than contractor.

**F. TELEPHONE SERVICE**

Offenders in the program will be responsible for maintaining telephone service at their monitored location.

**G. CONTRACTOR'S SECURITY PROCEDURES**

Security procedures must ensure system integrity. Contractor must provide the following information to the County upon contract award:

- i. Staff selection, background investigation and training procedures
- ii. Procedures for the prevention of unauthorized access to computer terminal and restriction on access to or modification of data, and
- iii. Safeguards for preventing unauthorized access by lines or modems.

**2. COMPENSATION, INVOICING, AND SET-OFF**

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay Contractor in accordance with Exhibit A fee schedule attached hereto for services performed.
- 2) The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed four hundred twenty thousand dollars

(\$420,000) per year exclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

- 3) 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. The County will notify the Contractor 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.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

### 3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of three (3) additional years, on a year-to-year basis, upon the approval of the Santa Fe County. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement.

### 4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth

in Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for not other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

## 5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

## 6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

## 7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue

leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

#### **8. 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

#### **9. SUBCONTRACTING**

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

#### **10. PERSONNEL**

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

#### **11. RELEASE**

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

#### **12. CONFIDENTIALITY**

Any confidential information provided to or developed by the Contractor 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 County.

#### **13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT**

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

**14. CONFLICT OF INTEREST**

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**16. ENTIRE AGREEMENT; INTEGRATION**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**17. NOTICE OF PENALTIES**

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

#### 19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

#### 20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

#### 21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor

in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

## 22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

## 23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County  
Office of the County Manager  
102 Grant Avenue  
Santa Fe, New Mexico 87501

To the Contractor: BI, Incorporated  
Attn: Laurent Lepoutre  
6400 Lookout Road  
Boulder, CO 80301

## 24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

C. Contractor is legally registered and licensed to operate as a business in New Mexico and is properly licensed to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

D. It will maintain throughout the life of this Agreement, its registration, licensure to conduct business in the State of New Mexico, and its status of "good standing" with the New Mexico Public Regulation Commission.

## 25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

## 26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

## 27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

## 28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

## 29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable**

The Contractor hereby irrevocably appoints, Corporate Creations Network, Inc., a New Mexico resident company located at 400 North Pennsylvania Ave. 600, Roswell, N.M. 88201, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

**32. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

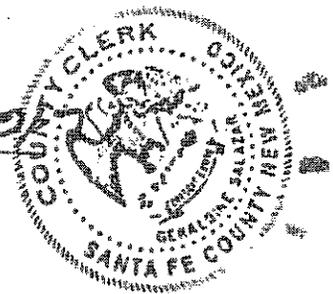
SANTA FE COUNTY:

  
Henry P. Roybal, Chair  
Board of County Commissioners

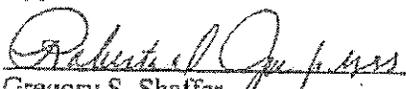
1/31/17  
Date

ATTESTATION:  
  
Geraldine Salazar,  
Santa Fe County Clerk

1-31-2017  
Date



Approved as to form:

  
Gregory S. Shaffer  
Santa Fe County Attorney

1-23-17  
Date

Finance Department Approval:

Don Moya  
Don D. Moya  
Santa Fe County Finance Director

1/23/17  
Date

**CONTRACTOR:**

Ruth Skerjanec  
(Signature)

1/20/17  
Date

By: Ruth Skerjanec  
(Print Name)

Its: VP, Financial Planning  
(Print Title)



## EXHIBIT A

### FEE SCHEDULE FOR ELECTRONIC MONITORING SERVICES

Technology	GSA Base Rate	Page in GSA contract where this pricing is listed	Santa Fe County Pricing *
HomeGuard 206	\$4.28	Page 2	\$4.28
TAD landline – alcohol only	\$6.54	Page 2	\$6.49
TAD landline – alcohol and RF	\$7.00	Page 2	\$6.49
TAD cellular – alcohol only	$\$6.54 + \$1.52 = \$8.06$	Page 2 (TAD) and Page 7 (TAD Cellular base)	$\$6.49 + \$1.50 = \$7.99$
TAD cellular – alcohol and RF	$\$7.00 + \$1.52 = \$8.52$	Page 2 (TAD) and Page 7 (TAD Cellular base)	$\$6.49 + \$1.50 = \$7.99$
ExacuTrack One – Active GPS (1.30.A30.ZX service plan)	\$6.65	Page 3	\$4.50
ExacuTrack One – Passive GPS (1.60.A0.NZ service plan)	\$5.24	Page 3	\$4.50
ExacuTrack One – Passive GPS (1.720.A0.NZ service plan)	\$4.53	Page 4	\$4.50
SL2	\$6.00	Page 7	\$6.00

\*Per day rate per client for monitoring and rental. Includes 20% shelf allowance and unlimited lost and damaged allowance.

**LOST OR DAMAGED:**

For all equipment above 100% replacement insurance costs due to loss or damage.

**SPARES:**

20% spare equipment allowance for each equipment type. This no-charge spare allowance is based on the total number of active days per month for each equipment type. Any inactive units in excess of the specified spare allowance will incur a spare unit charge per inactive day, per unit.

**SHIPPING:**

BI pays shipping costs from BI to agency sites and back. Replacement equipment will be shipped back to the County within 5 days of request or by promised delivery date. Equipment can be shipped within 24 hours in emergencies. Equipment will be shipped via ground transportation, with expedited shipping in emergencies.





