

Justin S. Greene
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Camilla Bustamante
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Hank Hughes
Commissioner, District 5

Gregory S. Shaffer
County Manager

MEMORANDUM FOR FILE

DATE: November 17, 2023

TO: File

FROM: Bill Taylor, Procurement Manager, CPO *BT*

RE: **Sole Source Determination per Section 13-1-126 NMSA 1978 for Service and Maintenance Agreement for the VirTra V-180 Training Simulator for a Total Amount of \$36,280.52, Exclusive of NM GRT.**

BACKGROUND

In June 2022, the Santa Fe County Sheriff's Office purchased the VirTra V-180 training simulator that provides law enforcement training scenarios which test a deputy's to make shoot or no-shoot decisions in real time. The maintenance and software license support provide thousands of training scenarios keeping updated training skill sets for officers.

VirTra Inc. is the creator of the V-180 training simulator and other simulation system providers do not have the proprietary rights to provide maintenance and support for the V-180 simulator.

DETERMINATION

Based on the specific and proprietary nature of the software that is currently in place for the V-180 training simulator for the Sheriff's Office, the support and service agreement is unique and is substantially related to the initial intended purpose of the original purchase of the training simulator.

It is there the determination of the County Chief Procurement Officer that the procurement of the maintenance and support services meet the criteria of a sole source procurement, pursuant to 13-1-126, NMSA 1978.

Contract Information:

Vendor: VirTra, Inc.
295 E. Corporate PI
Chandler, Arizona 85225
(800) 455-8746
(480) 968-1488

Statement of Services:

One year of annual service to include:

1. Telephone support
2. Remote assistance
3. Labor, parts, travel
4. Software updates
5. Overnight shipping

TOTAL Compensation**\$ 36,280.52, exclusive of GRT**

NOTE: This agreement may be extended an additional 3 years in 1 year increments.



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Account Name Santa Fe County Sheriff's Office Created Date 10/25/2023
Contact Name Michael Delgado Quote Number 00008426
Phone 505-310-3195 Expiration Date 11/30/2023
Email mdelgado@santafecountynm.gov

Ship To Name Santa Fe County Sheriff's Office Prepared By Ryan Bray
Phone (480) 968-1488
Extension 5012
Email rbray@virtra.com

Product SKU	Product Code	Product	Line Item Description	Product Description	Sales Price	Quantity	Total Price
	V-180-INSTL	VirTra 180 Installation/Training	Re-Installation and Training, requires warranty.	VirTra Installation and Training for one (1) V-180 System. Includes all travel and expenses in the CONUS.	\$7,240.86	1.00	\$7,240.86
8000816	SP-V180-A	Service Plan - V-180® - Annual	Equipment warranted by manufacturer until 06/30/2025	Additional year annual service agreement to include telephone support, remote assistance, labor, parts, travel, software updates, and overnight shipping. This package also includes an annual service and maintenance visit from a VirTra technician. Includes all travel and expenses in CONUS. [Payment due in full upon receipt of order acceptance, no cancellations as this is a subscription plan.]	\$36,215.52	1.00	\$36,215.52

Total Price \$43,456.38
S&H \$65.00
Grand Total \$43,521.38

Sales Terms and Conditions for Direct Sales to End Users/Buyer

Revised September 2023

1. Precedence. This Sales Terms and Conditions for Direct Sales to End Users/Buyers "Agreement" applies to Buyer's purchase of Goods and Services, as defined below, when purchased directly from VirTra "Seller". Any purchase of Goods and Services sold by Seller is expressly subject to and conditioned upon the terms and conditions set forth herein. By accepting delivery of the Goods and Services, Buyer accepts and is bound by this Agreement. Any different or conflicting additional terms set forth by, whether in Buyer's purchase order or another communication, are expressly rejected and will not be binding on Seller unless agreed to in writing by an authorized officer of Seller. Now therefore, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows.

2. Definitions: The following capitalized words shall mean: "End Users/Buyer" means the organization or person who buys Seller's Goods and Services. "Goods and Services" means without limitation, the articles, products, accessories, and services to be supplied to Buyer by Seller. "Technology and Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how, software, firmware, hardware, systems, components, or assemblies. "Seller" means VirTra, Inc., located at 295 E. Corporate Place, Chandler, AZ 85225, USA.

3. All Sales Final. All sales are final, and no returns, refunds or exchanges of the Goods and Services are allowed, except as provided by state or federal law, and, to the returns, refunds or exchanges are required by law, must be preapproved by Seller's Return Merchandise Authorization (RMA) form.

4. Restocking Fees. In Seller's sole discretion, all returns, refunds, or exchanges may be charged a restocking fee of up to 15% of the purchase price paid, plus any applicable shipping and sales tax, unless the returned product is defective, or the return is a direct result of Seller's error.



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5. Payment Terms. Terms of payment are within Seller's sole discretion and, unless otherwise agreed to by Seller in writing, 50% deposit payment must be received prior to Seller's acceptance of an order with the remaining 50% balance due upon shipping. Payment for Goods and Services will be made in United States currency (\$US Dollar) by a preapproved payment method. Credit card payment terms must be preapproved by Seller's Finance Department and if approved, invoices are due and payable within the time period noted on invoices, measured from the date of the invoice. An additional 3% fee will be charged to cover processing costs. Seller may at its sole discretion invoice parts of an order separately. No discounts shall be given for early payments.

6. Suspension or Cancellation: Seller may suspend or cancel Buyer's order for any failure by Buyer to comply with agreed upon payment terms. Seller is not responsible for pricing, typographical, or other errors in any offer by Seller and reserves the right to cancel any orders resulting from such errors.

7. Late Payments. Interest and late payment fees may be calculated from the day after the payment's stated due date through the date payment is received in full, at the maximum legal allowable interest rate in effect on the applicable dates.

8. Taxes. Sales tax, end user tax, pass-through tax, value-added tax (VAT), transaction privilege tax, consumption tax, customs tax and/or duties are the sole responsibility of Buyer, and Buyer agrees to reimburse Seller for all applicable taxes that Seller is required to collect, regardless of the tax amount being excluded from Seller's quotes or Buyer's Purchase Orders.

9. Tax Exemption. If Buyer requests tax exempt status, then Buyer must provide Seller with a correct, valid and signed tax exemption certificate applicable to the specific Goods and Services purchased, relevant to the end use location, prior to Seller invoicing. If an invalid tax exemption certificate is received or no tax exemption certificate is received, it will be the responsibility of Buyer to pay all required taxes. Additionally, it will be Buyer's responsibility to obtain any tax refunds permitted if Seller has collected and remitted taxes to a taxing authority.

10. Shipping, Title, Risk of Loss. Shipping and handling costs will be added to all invoices unless otherwise expressly indicated and agreed to in writing at the time of sale. Seller reserves the right to make partial shipments unless specifically stated otherwise on Buyer's signed Pro Forma Invoice or purchase order and such shipping terms are pre-approved by Seller in writing. Products may ship from multiple locations following the rules of the International Commercial Terms (Incoterms) as published by the International Chamber of Commerce (ICC). Title and risk of loss passes from Seller to Buyer FOB Origin domestic or Free Carrier (FCA) international upon Seller's delivery to the named place of delivery, cleared for export, as mutually agreed by both buyer and seller. Once seller is deemed to have delivered goods to the named place of delivery, the buyer is responsible for both unloading the goods and loading them onto their own carrier. Seller shall invoice upon shipping. Any loss or damage that occurs after seller's delivery is Buyer's responsibility. Buyer must promptly file claims for damaged items with the freight carrier. Shipping dates are estimates only.

11. Excusable Delays. Seller will use commercially reasonable efforts to deliver all products ordered as agreed or as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond the reasonable control of Seller, including but not limited to force majeure, fire, labor disturbances, riots, accidents, or inability to obtain necessary materials or components, Seller has the right, in its sole discretion and upon oral or written notice to Buyer, to delay or terminate the delivery.

12. Not for Resale or Export. Buyer represents and warrants that they are buying Seller's products for the specified end user, and Buyer will not resale or export Seller's products to a country other than the country listed as the Buyer's shipping destination. The shipment of certain Seller products outside of the United States of America (USA) is restricted by US federal law and neither Seller's products nor the technology can be exported out of the US without Seller's prior written approval. In addition, certain Seller Products require a validated export/import license (DSP 5, 61, or 73) prior to shipment to certain countries. If required, Buyer agrees to submit the required paperwork to Seller to process an application to obtain the required import/export license(s) from the US State Department. Seller cannot guarantee US State Department approval and has the right to cancel any item(s) not approved for import/export by the US State Department.

13. Regulations and Restrictions. Buyer agrees to comply with all applicable laws, codes and license requirements, and controls of the United States and other applicable jurisdictions in connection with the use of Seller products including Buyer's acceptance of responsibility for the payment of any relevant taxes or duties. Buyer is responsible for understanding and verifying all local laws, regulations, restrictions and building code requirements for the purchase, delivery, receipt, storage, installation and use of Seller's Goods and Services. Seller may suspend or cancel Buyer's order, at Seller's sole discretion, for violation of regulations and restrictions.

14. Technology and Intellectual Property Rights. Buyer agrees that Seller claims, and has claim to, various proprietary rights of its Goods and Services, and Buyer agrees to take reasonably necessary steps to ensure that Seller's rights will not directly or indirectly be violated, which the parties agree would cause irreparable harm to Seller. Except for the license to use the Goods and Services, the sale of Goods and Services will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Buyer may not obscure, remove, or alter any copyright, trademark, service mark or other proprietary notices or legends on the products.

15. Design Changes. Seller reserves the right to make changes in design of any of its products without incurring any obligation to notify Buyer or to make the same change to products previously purchased by Buyer.

16. Reverse Engineering. Customer acknowledges and agrees that the products are the confidential, valuable, and proprietary assets of VirTra, and the parties agree that improper use or disclosure of the products would cause VirTra irreparable harm. Accordingly, as a material element of this Agreement and as an inducement for VirTra to enter into this Agreement, Customer hereby agrees that Customer shall not: (a) create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the internal structure, the source code, hardware design, or organization of any Product, or any part thereof, or to aid or to permit others to do so, except and only to the extent expressly permitted by applicable law; (b) copy, modify, or translate any portion of the products, unless otherwise agreed, develop any derivative works thereof or include any portion of the software in any other software program; (c) separate the Product into component parts for distribution or transfer to a third party; and (e) attempt to make or to aid or permit others to make similar products to the software or products with or without enhancements, upgrades, or modifications.

17. Severable Provisions. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, then



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the remainder will remain in full force and effect and any invalid provision(s) will be modified or partially enforced by the court to the maximum extent permitted by law to effectuate the purpose of this agreement.

18. Limitation of Liability. To the maximum extent allowed by law, in no event shall Seller's cumulative liability to any party for any loss or damage resulting from any claims, demands, or actions arising out of or relating in any way to any purchase from Seller exceed the amounts received by Seller under the relevant purchase order, notwithstanding third-party purchases. In no event will Seller be liable for any special, indirect, incidental, exemplary, punitive, or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory, even if Seller has been advised of the possibility of those damages or if those damages could have been reasonably foreseen, and notwithstanding any failure of essential purpose of any exclusive remedy provided in the Warranty. Seller disclaims any representation that it will be able to repair any product under Warranty or make a product exchange with out risk to or loss of programs or data. Buyer agrees to release and save Seller harmless from any and all liability arising out of use or misuse of Seller product, including any claims for damages and personal injuries. Buyer agrees to assume all risks of loss and all liability for any damages and personal injury which may result from use or misuse of Seller product. Seller is not liable for any claims made by a third party or by Buyer for or on behalf of a third party.

19. Relationship of Parties. Nothing contained in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Agreement shall be deemed to construe either of the parties as the agent of the other. Assignment and Sub-Contracting. The contract between Buyer and Seller for the Goods and Services shall not be assigned or transferred, nor the performance of any obligation sub-contracted, without the prior written consent of both Buyer and Seller. The parties agree that such consent shall not be unreasonably withheld.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties. This Agreement supersedes and replaces any prior agreement or understanding between the parties, including any oral representations concerning the subject matter of this Agreement. Any prior or extrinsic representations or agreements, with the exception of the product warranty, if provided and any service and license agreement(s), are intended to be discharged or nullified.

21. Governing Law, Jurisdiction, and Venue. The laws of the State of New Mexico, USA govern this transaction and Agreement, without regard to conflicts of law. Any litigation regarding the interpretation or enforcement of this Agreement shall be resolved in the State of New Mexico and the courts of New Mexico shall have exclusive jurisdiction over such litigation and the parties agree to such exclusive jurisdiction. The parties expressly reject any application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") to this Agreement and the associated transactions.

22. Warranty. Seller warrants the product manufactured by Seller for a period of one year from delivery to the agreed delivery point ('Warranty Period') will materially conform to Seller's standard specifications available from the Seller for the product at the time of the issuance of the Purchase Order. Seller further warrants that the product, at the time of delivery, will be free from defects in material and workmanship for the Warranty Period. For third party Products not manufactured by Seller, Seller's only responsibility is to assign to its customer any manufacturer's warranty that does not prohibit such assignment. Product and parts that are consumed in normal operation are not covered by this Warranty. Notwithstanding the foregoing, Warranty and support may be void for any and all equipment damaged or destroyed by improper handling, use or misuse.

To the maximum extent permitted by law, Seller's Warranty and the remedies set forth in that Warranty are exclusive and in lieu of all other warranties, remedies, and conditions, whether oral or written, statutory, express or implied, as permitted by applicable law, Seller specifically disclaims any and all statutory or implied warranties, including without limitation, warranties of merchantability, design, fitness for a particular purpose, arising from a course of dealing, usage or trade practice, warranties against hidden or latent defects, and warranties against patent infringement. If Seller cannot lawfully disclaim statutory or implied warranties than to the extent permitted by law, all such warranties are limited to the duration of the express warranty described above and limited to the other provisions contained in this warranty statement. The remedies provided for in the warranty are expressly in lieu of any other liability Seller may have.

23. Buyer Ordered Delivery Delay. In the event of a delivery delay ordered by Buyer, the parties agree to make use of the following: Whereas the Customer has purchased certain products and services from VirTra under the Purchase Order; and Whereas the Customer has directed VirTra to hold and store within its premises the delivery until further notice; and Whereas VirTra shall ship the products FOB destination; and Whereas this Addendum does not operate as an acceptance of goods by the Customer. Now therefore, the parties agree that that VirTra has met its delivery obligations under the terms of sale upon meeting the following condition: VirTra shall provide to Customer photographs documenting that the Purchase Order is ready for shipment. An email from Buyer citing this section 23 shall be sufficient for the parties to proceed as described herein.

-Signatures follow -

The Buyer agrees that this Agreement shall govern all purchase orders and related transactions.

Buyer:

Signature: _____

Printed Name: _____

Date: _____

SELECT PAYMENT METHOD

Credit Card; include contact information only (subject to limits)

Purchase Order:

Check: