

**SANTA FE COUNTY
AGREEMENT
FOR DELIVERY AND INSTALLATION OF
WALK-IN FREEZER & WALK-IN COOLER**

THIS AGREEMENT is made and entered into on this 21st day of May, 2012, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **NRS, INC., dba NATIONAL RESTAURANT SUPPLY, INC.** (hereinafter referred to as the "Contractor"), a New Mexico corporation with a principal address located at 2513 Comanche Rd. NE, Albuquerque, New Mexico 87107 (hereinafter referred to as the "Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "County" shall mean the County of Santa Fe, New Mexico
- B. "Department" shall mean the Community Services Department
- C. "Purchase Order" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items and services to be provided by the Contractor.
- D. "Agreement" means this Agreement which requires the Contractor to supply, deliver and install a new walk-in freezer and walk-in cooler at a location specified by the Department upon the issuance of a Purchase Order.
- E. "Price" means the price paid by the County for the walk in freezer/cooler and its delivery and installation by the Contractor.

2. ITEMS AND SERVICES TO BE PROVIDED

- A. **Purchase.** "Attachment A" of this Agreement describes the price and specifications for the Contractor's supply, delivery and installation of the walk in freezer/cooler.
- B. **Items and Services Listed on Attachment A.** The County will issue a Purchase Order for the purchase of the goods and services described in Attachment A. The Contractor is required to accept the Purchase Order and furnish the item and service requested.
- C. **Specifications.** The items and services furnished under this Agreement shall meet or exceed the specifications provided in the Invitation for Bidders, IFB# 2012-0187-CSD/PL.
- D. **Delivery Instructions, Late Delivery and Installation Liquidated Damages; Acceptance and Return of Item.**

1. The Contractor shall provide with the new walk-in freezer and walk-in cooler an invoice listing the order number and this contract number.
2. The Contractor shall deliver and install the walk-in freezer and walk-in cooler no later than fifteen (15) calendar days of the date of the Contractor's receipt of a purchase order from the department. Unless otherwise agreed to or waived by the parties, if the walk-in freezer and walk-in cooler is not delivered and installed within the time stated in the purchase order, it will be considered a late delivery or late performance by the Contractor.
3. Timely delivery and installation of the items are of the essence in the performance of this Agreement. Because damage or costs incurred by the Department due to late delivery and installation of an item cannot be accurately assessed, Contractor agrees to pay as liquidated damages to the County \$100 per calendar day that an item is delivered or installed late based on the delivery and installation times stated in Paragraph 2 above.
4. If the Department does not accept any item and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
5. The Department will inform the Contractor within five (5) business days if the delivered item is unacceptable.
6. The total price listed in Attachment A for the item and its delivery and installation shall be the fixed price for the item and services.

E. Warranties and Operating Manuals

1. Contractor warrants that the new walk in freezer/cooler provided under this Agreement is covered by the most favored commercial warranties the Contractor gives to any customer for such items and services. The Contractor shall not disclaim any warranties of fitness for a particular purpose or warranty of merchantability.
2. Contractor shall furnish a written warranty for workmanship and parts and service for a minimum period of one (1) year from the date of delivery and/or installation. Contractor's installation shall include prompt follow-up service by the Contractor for items delivered and/or installed.
3. Upon delivery and installation of the walk in freezer/cooler the Contractor shall furnish the Department with the operating manual, warranty information, maintenance instructions and the names and phone numbers of contacts for all services and maintenance information.

3. 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 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. If applicable, 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.

4. PAYMENT. All payments under this Agreement are subject to the following provisions:

- A. **Compensation.** The County shall pay a not-to-exceed amount of \$23,982.44 exclusive of GRT to the Contractor for service and goods installed as described in Attachment A.
- B. **Inspection.** Final inspection and acceptance of a delivered item(s) shall be made by the Department.
- C. **Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Department shall determine if the services and deliverables meet specifications and will accept the items and service if they meet specifications and are as ordered by the Department. No payment shall be made for any item until the item has been accepted in writing by the Using Department. Unless otherwise agreed upon, between the Department and the Contractor within thirty (30) days from the delivery and receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of any item(s) or service. Unless the Using Department gives notice of partial acceptance or rejection within the time specified in Paragraph 2 above, the items and services will be deemed to have been accepted.
- D. **Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Agreement.
- E. **Payment.** County shall pay Contractor on an invoice received from Contractor within thirty (30) days from the date the County approves the invoice. Full payment for all accepted items and services will be issued by the County. No payment under this Agreement shall be conclusive evidence of the Contractor's performance of the Price Agreement, either wholly or in part. No payment made by the County shall be construed as an acceptance of defective or unacceptable items or service and shall not relieve the Contractor from correcting any defects or curing any unacceptable items or service. Should any such circumstances become evident, the County shall have the right, notwithstanding acceptance and payment, to cause the properly working new items to be delivered or installed by the Contractor at the Contractor's expense.

- F. **Contractor to Replace Defective items:** Any item delivered by Contractor that is deemed defective in that the item(s) does not meet the specifications shall be timely replaced by the Contractor at no cost to the County.
- G. **Taxes.** Applicable gross receipts taxes or local option tax shall be included on each invoice and shown as a separate item on each invoice. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and county tax identification number(s). If the Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Department shall provide the Contractor written evidence of such exemption(s).

5. TERM OF THIS AGREEMENT. This Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be three (3) months from the Effective Date.

6. CANCELLATION.

- A. The County reserves the right to cancel without cost to the County all or any part of any part of this Agreement.
- B. The failure of the Contractor to perform its obligations under this Agreement shall constitute a default of this Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item or component, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.
- F. It shall not be considered a cancellation of this Agreement if the County determines that due to emergency circumstances, the County must order the item and service from another source.

7. TERMINATION.

- A. **For Convenience.** Consistent with applicable New Mexico laws, this Agreement may be terminated by the County, without penalty, at any time prior to the Termination date of this Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Agreement shall not affect any outstanding order(s) issued under this Agreement prior to the effective date of termination for convenience by the County.

- B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

8. AMENDMENT. Except for amendment affecting price(s), this Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

9. ASSIGNMENT. Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Agreement.

10. NON-COLLUSION. In signing this Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

11. RECORDS. During the term of this Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the items delivered and service provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

12. APPROPRIATIONS. The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

13. 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 any performance required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

14. APPROVAL OF CONTRACTOR'S REPRESENTATIVES. The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

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

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

17. INDEMNIFICATION. The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

18. THIRD PARTY BENEFICIARY. This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

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

20. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price 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 department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT. 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 party or any of its rights under this Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL. The Provisions of the following listed paragraphs shall survive termination of this Agreement: Delivery & Billing Instructions; Records and Audit; Indemnification; Applicable Law; and Survival.

25. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

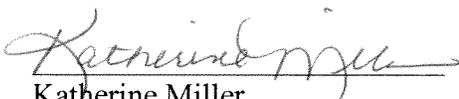
To the County:
Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:
National Restaurant Supply
2513 Comanche NE
Albuquerque, NM 87107

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

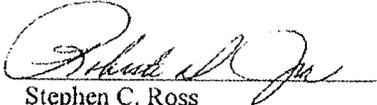
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

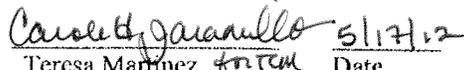
5.21.12
Date

APPROVED AS TO FORM


Stephen C. Ross
Santa Fe County Attorney

5/10/12
Date

FINANCE DEPARTMENT APPROVAL


Teresa Martinez *for TM*
Santa Fe County Finance Director

5/17/12
Date

CONTRACTOR


Signature

05/11/12
Date

Bruce Gulbas, President
Print Name and Title

FEDERAL TAX I.D. NUMBER: 74-1475515

ATTACHMENT A

**BID SHEET
IFB #2012-0187-CSD/PL**

Please offer your best price, for each item as outlined below. **The Bidders shall complete the following bid sheets in full, include signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. Offers will be accepted until 2:00 P.M. on the bid due date specified.

Purchase & Install Walk-In Freezer & Walk-In Cooler
For the Rio En Medio Senior Center

BID ITEM #1:

Walk-In Freezer (Nor-Lake Fast-Trak 200 – 225 Series or equivalent commercial grade)
12' x 8' x 7'7" Enclosed Freezer Box to include floor
HFC134A Polyurethane Foam Insulation

Refrigeration System
LAWD200RL4-BYH (or equivalent)

NSF Approved
Spring Action Door Closer
Optional five year extended compressor warranty

MAKE: Norlake

MODEL: Fast-Trak

PRICE ITEM #1: \$ 10,090.42

LABOR & INSTALLATION FOR ITEM #1: \$ 1,900.80

SUBTOTAL PRICE FOR ITEM #1 INCLUDING LABOR & INSTALLATION:

\$ 11,991.22

SUBTOTAL WRITTEN IN WORDS: \$ Eleven thousand, nine hundred ninety-one dollars & 22/100

BID ITEM #2:

Walk-In Cooler (Nor-Lake Fast-Trak 100-125 Series or equivalent commercial grade)
12' x 8' x 7'7" Enclosed Cooler Box to include floor
HFC134A Polyurethane Foam Insulation

Refrigeration System
NAWD125RL4-BYH (or equivalent)

NSF Approved
Spring Action Door Closer
Optional five year extended compressor warranty

MAKE: Norlake

MODEL: Fast-Trak 100-125

PRICE ITEM #2: \$ 10,090.42

LABOR & INSTALLATION FOR ITEM #2: \$ 1,900.80

SUBTOTAL PRICE FOR ITEM #2 INCLUDING LABOR & INSTALLATION:

\$ 11,991.22

SUBTOTAL WRITTEN IN WORDS: \$ Eleven thousand nine hundred ninety-one dollars & 22/100

TOTAL PRICE FOR ITEM #1 and ITEM #2 INCLUDING LABOR & INSTALLATION:

\$ 23,982.44

TOTAL WRITTEN IN WORDS: \$ Twenty three thousand nine hundred eight-two dollars & 44/100

ALL PRICING IS EXCLUSIVE OF GRT