

**SANTA FE COUNTY
INDEFINITE QUANTITY PRICE AGREEMENT
WITH HIGHWAY SUPPLY, LLC
TO PROVIDE HISTORIC MARKERS**

THIS AGREEMENT is made and entered into this 3rd day of December 2014 by and between Santa Fe County, a New Mexico political subdivision, (hereinafter "**County**") and **Highway Supply, LLC** located 6221 Chappell Road NE, Albuquerque, N.M. 87113 and authorized to do business in the State of New Mexico, (hereinafter "**Contractor**").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "**County**" shall mean the County of Santa Fe, New Mexico.
- B. "**Using Department or Department**" shall mean a Department of Santa Fe County.
- C. "**Purchase Order**" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items to be provided by the Contractor.
- D. "**Price Agreement**" means this indefinite quantity Price Agreement which requires the Contractor to provide historic markers to a Using Department which issues a Purchase Order.
- E. "**Price**" means the fixed prices paid by the County and its Departments for historic markers as described in Attachment A.

2. GOODS TO BE PROVIDED

- A. **Purchase.** Attachment A of this Price Agreement is the prices for the Contractor's supply and delivery of historic markers. Attachment A also indicates any specifications required for the items that are subject of this Price Agreement.
- B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any item ordered by the County must be an item described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement #2015-0131-B-PW/PL.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the items listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of items be issued under this Price Agreement. Quantities of items may vary and the Contractor is required to accept the Purchase Order and furnish the item(s).
- D. **Specifications.** The items furnished under this Price Agreement shall meet or exceed the specifications provided in the Information for Bidders, IFB# 2015-0131-PW/PL including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s) and price(s).
- E. **Delivery and Billing Instructions.**
 - 1. The Contractor shall supply and deliver the items in accordance with the County's instructions. The Contractor shall also deliver, with the items ordered, an invoice listing the order number and the Price Agreement number.

2. Whenever, the Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within five (5) business days that a deliverable is unacceptable by the Department.
4. Prices listed in Attachment A shall be the fixed prices for the items.

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

- A. Inspection.** Final inspection and acceptance of a deliverable shall be made by the Using Department.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items and deliverables meet specifications and will accept the items or deliverables if they meet specifications. No payment shall be made for any item until the item has been accepted in writing by the Using Department. Unless the Using Department gives notice of partial acceptance or rejection within the time specified in Paragraph 2 above, the item or deliverables will be deemed to have been accepted.
- C. Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.
- D. Payment.** County shall pay Contractor on an invoice received from Contractor within thirty (30) days from the date the County approves the invoice.
- E. Taxes.** Applicable gross receipts taxes or local option tax(es) 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 Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor written evidence of such exemption(s).

4. TERM OF THIS AGREEMENT. This Agreement shall become effective on the date first written above and shall terminate four (4) years later, unless earlier terminated pursuant to Section 6 (Termination) or Section 11 (Appropriations and Authorizations).

5. CANCELLATION.

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the items or deliverables fail to meet the requirements of this Price Agreement.
- B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, 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.

6. TERMINATION.

- A. For Convenience. Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the Termination date of this Price 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 Price Agreement shall not affect any outstanding order(s) issued under this Price 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.

7. AMENDMENT. Except for amendment affecting price(s), this Price 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.

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

9. NON-COLLUSION. In signing this Price 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 Price Agreement.

10. RECORDS. During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables 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 Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS. The terms of this Price 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 Price Agreement. If sufficient appropriations and authorization are not made, this Price 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.

12. 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 Price Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosure Act.

13. 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.

14. SCOPE OF AGREEMENT, MERGER. This Price 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 Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

15. 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.

16. 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.

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

18. NEW MEXICO TORT CLAIMS ACT. No provision of this Price 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.

19. 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 Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 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 Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.
- C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.
- D. Increased Limits. If, during the life of this Price 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.

20. APPLICABLE LAW; CHOICE OF LAW.

A. This Price 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 Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

B. Contractor shall comply with the requirements of *Santa Fe County Ordinance 2014-1 Establishing a Living Wage*.

21. 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 Price 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 Price Agreement, which can be given effect without the invalid provision.

22. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party or any of its rights under this Price 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.

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

24. 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, New Mexico 87504-0276

To the Contractor:

Highway Supply, LLC
6221 Chappell Road NE
Albuquerque, New Mexico 87113

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

25. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. The Contractor hereby irrevocably appoints CT Corporation System, 123 East Marcy Street, Santa Fe, NM 87501, a New Mexico resident company 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.


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

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

12.2.2016
Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

11/18/14
Date

FINANCE DEPARTMENT APPROVAL



Teresa C. Martinez, Director
Santa Fe County Finance Department

11/24/2014

Date

CONTRACTOR

Signature

Date

Print Name

Print Title

FEDERAL TAX I.D. NUMBER: _____

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Santa Fe County Finance Department

Date

CONTRACTOR

Signature

12-3-14
Date

MARTY SAAVEDRA
Print Name

INSIDE SALES COORDINATOR
Print Title

FEDERAL TAX I.D. NUMBER: 26-0096526

ATTACHMENT A**UNIT PRICING**

Unit prices indicated below include all costs for labor, equipment, tools, materials, federal tax, permits, licenses, fees, freight and any other items necessary to complete the services.

Item	Est. Qty.	Unit	Article and Description	Unit Price \$	Unit Price Written in Word
25	30	EA	Signs, Historical marker text plates, 36" x 41" reverse screened brown on white (not cut out applied letters will be accepted), Type IV, VIII or IX prismatic screening, type of sheeting to be indicated at time of order	\$130.00	One hundred thirty dollars & no cents
26	30	EA	Signs, Historical marker map plates, 36" x 41" reverse screened brown on white, Type IV, VIII or IX prismatic screening, not to include creation of artwork for map plates provided by NMDOT, type of sheeting to be indicated at time of order	\$130.00	One hundred thirty dollars & no cents
27	35	EA	Artwork for creation of historical marker map plate	\$0.00	No charge
28	35	EA	Sign frames, historical marker as per NMDOT specification, stained pine	\$520.00	Five hundred twenty dollars & no cents
29	35	EA	Head boards, shaped with routed Zia symbol & lettering, stained pine	\$170.00	One hundred seventy dollars & no cents
30	45	SF	Signs, routed redwood, 2" nominal thickness, 6.8 lbs. per sq. /ft.	\$25.00	Twenty five dollars & no cents

Item	Est. Qty.	Unit	Article and Description	Unit Price \$	Unit Price Written in Words
31	46	SF	Signs, routed redwood, 1" nominal thickness, 4.0 lbs. per/sq. ft.	\$20.00	Twenty dollars & no cents
32	47	SF	Silk screen printing frames, press-ready for standard highway traffic signs cost per square foot of image area only. Sturdy 2 x 4 redwood frames included. Compatible and durable for use with metalist M &M MP-52 medallion semiautomatic silk screen printer. Polyester 180 hi-fylon yellow Swiss materials for printing black or transparent ink or reflective sheeting pre-mounted on plywood & aluminum panels. Materials to be air stretched and stapled with cloth tape, liquid screenstar film or equal. Silk screen material to be durable and capable of being washed in xylene MEK bath for re-use. 3M 639 tape shall be applied to well area of screen for reinforcement of polyester. Federal MUTCD sign code, sign size, screen size and image positioning on screen as designated at time of order. Delivery to be included in unit bid price.	\$8.50	Eight dollars & fifty cents

All bid items are exclusive of NM Gross Receipts Tax

SPECIFICATIONS / ADDITIONAL TERMS & CONDITIONS

1. All items and materials shall meet (or exceed) the New Mexico Department of Transportation (NMDOT) Standard Specifications for Road and Bridge Construction Section 701, current edition, plus any Supplemental/Standard Specifications or memo's regarding Sign Requirements established by NMDOT.
2. Standard Signs" are defined as regulatory and warning highway traffic signs in specified sizes referred to in the Manual on Uniform Traffic Control Devices (MUTCD) and assigned a code number.

Among signs numbered in the MUTCD that will not be considered "standard" signs are the following: M1-1; M1-6; M2-2, D1, 2, 3, 7, 10, 12 series; 1-1 & 3; E series; and CD series. Also considered "standard" signs for purposes of this Price Agreement will be any sign that can be silk screened where a quantity of fifty (50) or more identical signs are being ordered on a single order, or a lesser quantity when a previous purchase of fifty (50) or more have been ordered from the same vendor.

Reverse screened mile marker blanks will be considered "standard".

The square feet of square, rectangular and triangular signs are to be calculated on actual square footage basis. The square feet for stop signs, school crossing and other irregular shaped signs are to be calculated using the widest and longest dimensions.

3. "Special Signs" are defined as guide signs that are intended and made for one (1) particular location or signs that do not qualify as "standard" signs or signs that are not otherwise specifically referenced by separate bid item in this Price Agreement.

Orders for special signs will include two (2) lines of the Price Agreement: The first line item will be for a standard sign with the appropriate substrate and sheeting and the second line will be the per character line item for each letter and number to be placed on the sign.

Special signs may be manufactured using machine cut letters or digital printing.

4. Signs provided under this Price Agreement must be guaranteed by the sign manufacturer for a length of time not less than the life of the sheeting specified by the sheeting manufacturer.
5. All items provided under this Price Agreement must comply with all applicable requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

SHIPPING, PACKING AND INVOICING

1. All signs ordered shall be delivered on sturdy pallets in an upright position, so as not to damage sheeting material, with strapping material for ease and safety of off-loading with forklift or moving with pallet jack **OR** delivered flat, strapped and banded on a pallet and separated with liner paper.
2. Signs shall be separated using liner paper to eliminate sticking and damage to sheeting material.
3. All deliveries shall be F.O.B. Destination. Destination shall mean delivered to the receiving dock of the Santa Fe County Public Works Department located at 424 NM 599, Santa Fe, N.M. 87506 or other point specified in the purchase order.
4. Timely delivery for all orders is an important component of the Price Agreement. The Contractor shall provide written notice to the County as soon as possible should the Contractor anticipate not being able to meet the stated delivery times.
5. Santa Fe County assumes no responsibility for goods until accepted at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the Contractor until accepted by Santa Fe County.
6. The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the item number. The County's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing list.
7. All sign unit prices should reflect all freight charges. The Contractor may impose shipping and handling charges for enhanced delivery services (overnight courier service, second-day courier service or delivery-by-messenger service). Such enhanced delivery charges shall be pre-paid by the Contractor and billed as separate item at actual cost. The Contractor shall advise the procuring department of any enhanced delivery charges prior to the acceptance of the purchase order.
8. Whenever Santa Fe County does not accept any product and returns it to the vendor, all related documentation furnished by the Contractor shall be returned also. The department will inform the Contractor within five business days that a deliverable is unacceptable by the department.
9. The Contractor shall bear all risk of loss or damage with respect to the returned products except for loss or damage directly attributable to the negligence of the department.
10. Unless otherwise agreed upon by the department, the Contractor is responsible for the pick-up of the returned items.

11. The Contractor's invoice shall be submitted duly certified and shall contain the following information: purchase order number, description of supplies or services, quantities, unit price and extended totals.
12. Separate invoices shall be rendered for each and every complete shipment. Invoices shall be submitted to the County department named on the purchase order.

COMMERCIAL WARRANTY

The Contractor agrees that the supplies and/or services furnished under this order shall be covered by the most favorable commercial warranty the Vendor gives to any customer for such supplies or services.

LIQUIDATED DAMAGES

All damages resulting for late delivery of goods or services shall be the responsibility of the Contractor. In the event of failure of the Contractor to deliver in accordance with this requirement, the Contractor shall be liable to the County for late delivery liquidated damages in the amount of \$100.00 each day the materials and services are delivered late.

Liquidated damages will incur as follows:

Signs Ordered	Required Delivery Time
1-1,000 SF	30 working days
1,001-10,000 SF	70 working days
10,001-20,000 SF	77 working days
20,001-30,000 SF	91 working days
30,001-40,000 SF	105 working days
40,001-50,000 SF	110 working days

