

## CITY OF SANTA FE

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Conteneo, Inc. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

Contractor shall work with City of Santa Fe to design and produce a four-phase project as outlined below. Our timeline for this engagement is set forth below.

(A) Phase 1 Collection

(1) Planning & Preparation (By January 20, 2018)

In this phase Contractor will assist Santa Fe in the following activities:

(a) Contractor shall work with Santa Fe and the project lead to develop a visual collaboration framework and a decision engine framework both designed to be used online, in small groups and with individuals in order to meet the objectives outlined above.

(b) Contractor shall work with the city's project lead to develop a schedule and a list of milestones and tasks to ensure that the objectives are met in a timely way. This planning document will likely be a Google Doc unless both Contractor and Santa Fe agree to an alternative tool.

(c) Contractor shall provide training for facilitators as needed so that they can facilitate online forums and in-person iPad supported forums

during phase 3 as needed. All prospective facilitators shall be required to watch 2-3 training videos in advance to make the training session most efficient and effective.

(2) Online Forums (Week of January 29, 2018)

(a) In this phase participants shall be invited to join either facilitated collaborative forums with 4 – 7 other residents OR unfacilitated individual forums. To maximize participation of all residents, we shall promote the forums at public facilities such as libraries, and shall have staff at certain locations to help people with using Contractor's online service. Collaborative forums last from 30-60 minutes depending on number of participants and level of participation. Ideally 100 – 200 residents shall complete a facilitated forum, with an additional 100-200 completing an unfacilitated forum, during Phase 2.

(B) Phase 2 Visioning

(1) In-Person Mid-point Feedback Event (Mid-March 2018)

In this phase, Contractor shall work with the project lead to ensure that facilitators have the tools they need to collect in-person feedback from approximately 100 community members in order to give designers feedback part way through their design process. Contractor shall provide secondary support for the development of these frameworks which can be .png images created by the design firms. Contractor is not facilitating this event.

(C) Phase 3 Evaluation

(1) Final In-Person and Online Evaluations (Early April 2018)

Similar to prior phase, Contractor shall work with the project lead to ensure that facilitators have the tools and forums they need to engage with community members

in-person and online to collect feedback from as many parts of the community as possible. Weave with 5 – 8 “visions”- as-frameworks shall be used online as unfacilitated opportunities for any community member to provide comments and indicate preferences. Contractor is not facilitating any events or forums. The primary focus of this work is the online forums.

(D) Analysis and Reporting (Mid-April 2018)

Contractor shall collect and analyze all feedback from in-person and online Weave sessions and present findings to the project lead which will include insights and ideas from the community. The complete set of raw data shall also be delivered to the city for further analysis and reference.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed twenty-one thousand dollars (\$21,000), inclusive of applicable gross receipts taxes. Payment shall be made for services actually rendered at a rate of three hundred fifty dollars (\$350) per hour for facilitation services, and three hundred twelve dollars (\$312) per hour for all other services. Invoices shall be billed at the end of each phase.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on May 15, 2018 unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 30 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services

rendered, therefore the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. 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 City.

9. 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 the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive

general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

### 13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

Specifically regarding intellectual property indemnification, Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or Services provided under this Agreement, Contractor agrees to reimburse the City for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City shall:

1. Work with Contractor to control the defense and settlement of the claim; and
2. Cooperate with Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any



right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and

understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:  
Office of Economic Development  
Attn: Matt Brown  
P.O. Box 909  
Santa Fe, NM 87504

Contractor:  
Conteneo, Inc.  
Attn: Luke Hohmann, CEO  
1296 Kifer Rd Ste 601  
Sunnyvale, CA 94086

IN WITNESS WHEREOF, the parties have executed this Agreement on the date  
set forth below.

CITY OF SANTA FE:

CONTRACTOR:  
CONTENEO, INC.

  
BRIAN K. SNYDER, CITY MANAGER

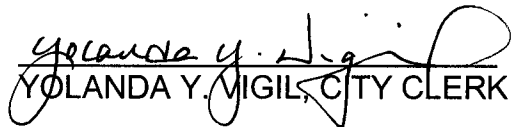

See Attached  
NAME AND TITLE

DATE: 01/16/2018

DATE: \_\_\_\_\_

CRS# 03-387 801-00-3  
City of Santa Fe Business  
Registration # 18-00146924

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK 

APPROVED AS TO FORM:

 1/8  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

 1/12/18   
ADAM K. JOHNSON  
FINANCE DIRECTOR

22116.510340  
BUSINESS UNIT/LINE ITEM

set forth below.

CONTRACTOR:  
CONTENEO, INC.

Laura Richardson V.P. Sales  
NAME AND TITLE

DATE: 01-19-2018

CRS# 03-387 801-00-3  
City of Santa Fe Business  
Registration # 18-00146924

YOLANDA Y. VIGIL, CITY CLERK

KELLEY A. BRENNAN, CITY ATTORNEY 1/8

 1/12/18  
ADAM K. JOHNSON  
FINANCE DIRECTOR

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BUSINESS UNIT/LINE ITEM