

**CITY OF SANTA FE**  
**PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (Agreement) is made and entered into by and between the CITY OF SANTA FE (the City) and the Santa Fe Boys & Girls Club, a New Mexico a non-profit corporation in good standing in the State of New Mexico (the Contractor). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

**WHEREAS**, the 2015 Legislature of the State of New Mexico appropriated Thirty Thousand Dollars (\$30,000.00) in state funds (the Appropriation) for "planning, designing and constructing improvements, including the purchase and installation of playground equipment and surfaces, at the Boys & Girls Club facilities in Santa Fe," identified as Project No. 15-0857, (the Project); and

**WHEREAS**, the reversion date for the Appropriation is June 30, 2019; and

**WHEREAS**, the City has reviewed the Project and agreed in principle to be the fiscal agent for the Appropriation; and

**WHEREAS**, the City has determined that it is in the best interest of the welfare of the citizens of the City of Santa Fe to enter into this Agreement for the purposes of effectuating the City's role as fiscal agent for the Appropriation; and

**WHEREAS**, the City owns in fee simple the land and/or the building within which the improvements and/or equipment to be paid for by the Appropriation will be located; and

**WHEREAS**, for the foreseeable future, the City will continue to own the improvements and/or equipment to be paid for by the Appropriation; and

**WHEREAS**, the Contractor shall provide the City project management services for the expenditure of the Appropriation, as herein described; and

**WHEREAS**, the Appropriation, this Agreement, and the City's role as fiscal agent for the

Appropriation as described herein are in compliance with Section 14, Article IX of the New Mexico Constitution (the "Anti-Donation Clause"), because all of the Appropriation will be expended on actual costs for the construction or improvement of City-owned property, for the benefit of City residents; and

**WHEREAS**, as a condition precedent to this Agreement, the City must first enter into a grant agreement (Grant Agreement) with the State of New Mexico Department of Finance and Administration (DFA), to enable the City to serve as fiscal agent to the Appropriation;

**NOW THEREFORE**, the Parties enter into this Agreement as follows:

1. SCOPE OF SERVICES

The Contractor shall serve as the project manager for the Project to plan, design and construct improvements, including the purchase and installation of playground equipment and surfaces, at Boys and Girls Club facilities in Santa Fe. The Contractor shall submit periodic project reports to the City in accordance with Article 3 of this Agreement.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, 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. PROJECT REPORTING

A. Monthly Project Manager Status Reports. The Contractor shall submit Project construction status reports (Monthly Project Manager Status Reports) to the City's Public Works Director and the City's Grant Administrator by the 15<sup>th</sup> day of each month during the construction and implementation phase of the Project in order to facilitate the City's Capital Project Monitoring System

(CPMS) and Grant Agreement reporting requirements. The Monthly Project Manager Status Reports shall detail for the preceding month: the Project construction work; the methods and procedures used to implement the Project; a description of any problems or delays that have occurred; and a detailed accounting of Project expenditures including, without limitation, the name of and financial obligation to sub-contractors and vendors, and the total amount of the Appropriation expended to date. Monthly Project Manager Status Reports shall be submitted to the City until such time as the full amount of the Appropriation has been expended, the Project's construction is complete, and the Project is accepted by the City.

B. Final Project Manager Report. The Contractor shall submit the final report (Final Report) to the City's Public Works Director and the City's Grant Administrator within 10 days of the Project's reversion date, or within 10 days of early termination, whichever first occurs. In the Final Report, the Contractor shall certify that all Appropriation funds have been completed and funds expended in accordance with all of the requirements of this Agreement, and in compliance with all applicable state and regulatory requirements.

C. Requests for Additional Information/Project Inspection. The City may require additional information as deemed necessary and the City and the DFA and shall be permitted by the Contractor to conduct onsite inspections of the Project. The Contractor shall respond to requests for information regarding the Project within a reasonable period of time.

#### 4. GENERAL PROJECT CONDITIONS

A. Compliance with Law and Procurement Code. Appropriation funds must be spent in accordance with applicable laws, regulations, policies, and guidelines, including but limited to, the City's Procurement Code (a.k.a, the City's Purchasing Manual).

B. Certification of Non-Interest. By the time the Contractor submits its first application for payment, the Contractor shall certify to the City that no member, officer, or

employee of the City (or its designees or agents), no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure (or for one year thereafter) shall have any interests (direct or indirect) in the Contractor or any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement.

C. The Contractor shall certify that such a Certification of Non-Interest provision shall be included in all contracts and subcontracts in connection with the Project.

D. The Contractor shall at no time convert any property acquired or developed with Appropriation funds to uses other than those specified for the Project under this Agreement.

#### 5. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed Thirty Thousand Dollars (\$30,000.00) inclusive of gross receipts taxes, on a reimbursement basis for eligible expenses under the Appropriation.

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 and expenditures must be made before the reversion date of the State appropriation, and expiration date and, if applicable, early termination date of this Agreement.

#### 6. 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.

7. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2019 unless sooner pursuant to Article 8 below.

8. TERMINATION

A. This Agreement may be terminated by the City upon sixty (60) 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 and papers prepared under this Agreement.

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of six years thereafter, all project records including but not limited to all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts, subcontracts advertisements, minutes of pertinent meetings, as well as detailed records that indicate the date, time and nature of services rendered and payments made. These records shall be subject to inspection upon request by the City, the DFA, and the New Mexico 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 or improper expenditures.



19. 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.

20. AMENDMENT

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

21. 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.

22. 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, and shall abide by all federal, state and local laws, rules and regulations pertaining to equal employment opportunity.

23. 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.

24. 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:

If to the City:

City of Santa Fe:  
Attn: David A. Chapman  
P.O. Box 909  
Santa Fe, NM 87504-0909

If to Contractor:

Santa Fe Boys & Girls Club  
Del Norte / Zona de Sol  
P.O. Box 2403  
Santa Fe, NM 87504

25. ADDITIONAL TERMS

A. Subject to Grant Agreement. This Agreement is subject to any and all relevant terms of the Grant Agreement, which shall be in substantially the same form as Exhibit A. If there is a conflict between this Agreement and the Grant Agreement, the most restrictive terms shall control.

B. State Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico (Legislature) for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, 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. Contractor hereby waives any rights to assert an impairment of contract claim against the City, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or early termination of

*Final PSA B&GC 15-0857 from State Appropriation template 20171026 (3) 03-07-18*

this Agreement by the City or the DFA/LGD.

C. General Conditions and Restrictions.

1. The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. For every contract or project in excess of sixty thousand dollars (\$60,000), the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. The Contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment commuted at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

2. The Contractor warrants that no officer or employee of the City or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Agreement, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. Contractor shall incorporate into all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

3. Contractor shall certify to the City that no funds have been paid or will be paid by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of this agency or body in connection with this Agreement, the Appropriation, of the awarding of any Third Party Obligation. Contractor shall incorporate into all subcontracts the language

set forth in this paragraph prohibiting lobbying to be included in the award documents for all sub awards including but not limited to subcontracts, loans and cooperative agreements. Contractor shall certify that such language has thus been incorporated.

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

**CITY OF SANTA FE:**

**CONTRACTOR:**

  
BRIAN K. SNYDER, CITY MANAGER

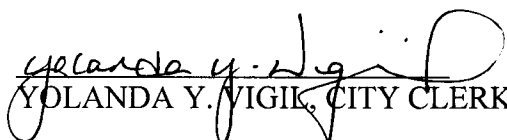

  
JEREMY PEREA, ASSISTANT EXECUTIVE  
DIRECTOR

DATE: 03/27/18

DATE: 3/21/18

CRS# 02-265457-00-7  
City of Santa Fe Business  
Registration # 16-00040240

ATTEST:

  
YOLANDA Y. VIGIK, CITY CLERK 

APPROVED AS TO FORM:

 3/23  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

 3-26-18  
ADAM K. JOHNSON, FINANCE DIRECTOR

32214.510400  
Business Units & Line Items  
dac

**EXHIBIT A**

**GRANT AGREEMENT IN SUBSTANTIAL FORM**