

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 Info-Tech Research Group, 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

The Contractor shall provide the following services for the City and also described in Exhibit "A" attached hereto and incorporated herein:

A. One year Info-Tech Membership subscription and to include:

1. 2 Advisory Seats and 18 Reference Seats with unlimited access to Best Practice Toolkits, Webinars, Vendor Evaluations, Contracts Review, Guided Implementations, all Diagnostics and Benchmarking programs at www.infotech.com.

2. One Workshop- four day on-site engagement. The travel and meals expenses to be billed separately as a not-to-exceed amount listed in compensation.

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 thirty-nine thousand nine hundred eight dollars and forty-five cents (\$39,908.45) exclusive of applicable gross receipts taxes. Payment shall be as follows:

- (1) \$34,458.45 exclusive of applicable gross receipts taxes for the renewal and workshop,
- (2) \$5,450.00 for the travel and meals.

B. In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Agreement such as per diem and mileage expenses which shall not exceed the amounts provided in the Per Diem and Mileage Act.

C. 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.

D. 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 December 20, 2018.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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. Nothing in this release negates, voids, or otherwise detracts from any right or remedy Contractor may have or pursue against City under federal or state laws, including but not limited to those laws protecting Contractor's intellectual property rights.

11. 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.

12. 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 as a result of their

- A. Gross Negligence; or
- B. Fraud or willful misconduct; or
- C. Negligence causing serious personal injury or death.

12b. LIMITED LIABILITY

In no event, except for the instances identified in the indemnification Section 12, to which no limit of liability applies unless otherwise stated in that Section, will Contractor or its related entities, suppliers, subcontractors, agents, or distributors be liable to the City for any indirect, special, punitive or consequential damages (including but not limited to damages for loss of business profits, business interruption and the like), or any other damages arising in any way (even if they have been advised of the possibility of such damages and regardless of the form of action whether in contract, tort, strict liability, operation of law or otherwise, including without limitation the negligence of Contractor or its related entities, suppliers, sub-contractors, agents or distributors) for any matter including without limitation: (i) any errors, omissions, or other inaccuracies in any material or advice provided as part of the Service, or, (ii) any unintended or unauthorized access, alteration, theft, corruption or destruction of files, data, transmission facilities or equipment (whether by Contractor or third parties). Some jurisdictions do not allow the exclusion or limitation of indirect, incidental, or consequential damages, so the above limitation may not apply to the City, but shall apply in every case to the fullest extent permissible by law.

In all circumstances, except those described in the Indemnification Section 13, the maximum amount that Contractor or its related entities, suppliers, sub-contractors, agents or distributors is liable for, for any reason whatsoever is the price paid by the City for the services giving rise to such breach only.

The parties acknowledge that Contractor has set its prices and entered into this agreement in reliance on the limitations of liability and disclaimers of warranties and damages set forth herein, and that the same form a fundamental and essential basis of the

bargain between the parties. They shall apply even if this agreement is found to have failed in its fundamental or essential purpose or been fundamentally breached.

13. 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.

14. 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.

15. 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.

16. AMENDMENT

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

17. 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.

18. 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.

19. 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.

20. NOTICES

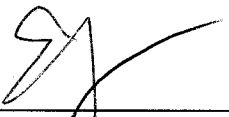
Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Joshua Elicio
PO Box 909
Santa Fe, NM 87504-0909

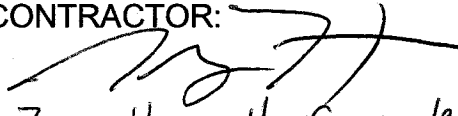
Contractor:
Bob Rose, Director Member Services
Info- Tech Research Group
3960 Howard Hughes Parkway
Suite 500
Las Vegas, NV 89169

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

CITY OF SANTA FE:

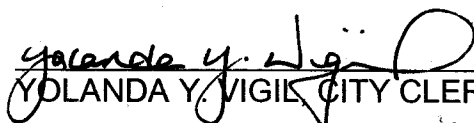

Erik Litzenberg
Interim City Manager
DATE: 5/18/18

CONTRACTOR:

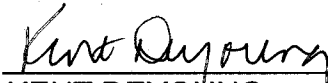

Ryan Huggett, Corporate Counsel
NAME AND TITLE

DATE: May 25, 2018
CRS# 03-314304-00-8
City of Santa Fe Business
Registration # 18-00130060

ATTEST:


YOLANDA Y. VIGIL CITY CLERK
aw

APPROVED:


KENT DEYOUNG,
INTERIM FINANCE DIRECTOR

APPROVED AS TO FORM:

 4/20
GENO ZAMORA, INTERIM CITY ATTORNEY

62250.530700
Business Unit/Line Item