

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Elizabeth Martin & Associates**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work: Appear at meetings, scheduled through the City Clerk; operate and maintain electronic recording equipment, produce and preserve a recoverable audio record of the verbal proceedings of all meetings covered; take a stenographic or speed writing record of proceedings during the progress of a meeting; and have the ability to read back, when requested, verbatim comments of involved parties. The Contractor shall provide a qualified substitute to fulfill such requirements in the absence of the Contractor. This shall be done at the Contractor's sole expense and the Contractor shall notify the City Clerk's Office of a substitute.

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1. Accurately transcribe meeting records in the form of minutes in a cogent, articulate and comprehensive form to preserve a complete, accurate and legally sufficient record of conduct of all meetings. Transcriptions with an original signature of the Transcriber shall be submitted to the City Clerk no later than eight (8) working days following each meeting with the exception of Paragraph H., herein. *An electronic version of the minutes will be accepted on the eighth day; however payment will not be made until the original transcription with original signature is submitted to the City Clerk.* Working days as used herein shall mean Monday through Friday, excluding legal holidays. Verbatim transcriptions may be required when requested by the City Clerk. The Contractor shall provide a qualified substitute to fulfill such requirements in the event the Contractor is unable to perform. This shall be done at the Contractor's sole expense.

2. Attend meetings at all hours of the work day, including evening and night meetings. Some weekend work may be required. The Contractor must furnish reliable personal transportation in order to attend required meetings wherever the location.

3. Any approved additions or corrections to the minutes shall be made by the Contractor and submitted to the City Clerk's Office

4. In addition to the transcriptions submitted, the Contractor shall provide the approved minutes by E-Mail or on a high-density disk (Microsoft Word compatible) to the City Clerk's office for placement on the City of Santa Fe's Web page. Failure to include the transcriptions with an original signature and the e-mailed copy will result in a delay of payment.

5. Provide duplicate copies of meeting tapes at the request of the City Clerk.

6. Prepare an index for each set of minutes.

7. Submit Public Works Committee minutes to the City Clerk, no later than 12:00 noon of the fourth (4th) day following the Public Works Committee meeting. Upon request by the City Clerk, submit Planning Commission and Historic Districts Review Board minutes to the City Clerk, no later than 12:00 noon of the fifth (5th) day following the aforementioned meetings. Contractor shall retain audio recordings of these meetings for 60 days following the approval date of minutes.

8. At the Contractor's expense, obtain status as a Notary Public for the State of New Mexico prior to execution of this Agreement, *if assigned to Quasi-Judicial hearings*.

9. Obtain a Federal Tax ID number, New Mexico CRS number and local business license prior to execution of this Agreement.

10. Provide Deliverable Products as follows:

(A) The Contractor shall deliver the products required in the above sections in accordance with the stated provisions. The City Clerk will verify the acceptance of submitted products in order to ensure that the products meet the specifications agreed to in this Agreement.

(B) All submitted products will be reviewed by the City Clerk to determine whether or not the products are acceptable. The City reserves the right to request replacement services and products for damaged goods, goods that do not meet minimum requirements, or goods that do not appear to be correct.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of twenty-five dollars and fifty cents (\$25.50) per hour, such compensation not to exceed (\$18,000.00), excluding gross receipts tax. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$18,000.00).**

This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

C. The total amount of this Agreement shall be broken down as follows:

- (1) A seventy dollar (\$70.00) appearance fee for each meeting, for appearing at and electronically recording and note taking of meetings. For meetings in excess of three hours in length, Contractor shall be paid a rate of twenty-two dollars (\$22.00) per additional hour;
- (2) An hourly rate of twenty-five dollars and fifty cents (\$25.50) per hour for transcribing the minutes of said meetings;
- (3) An hourly rate of twenty-five dollars and fifty cents (\$25.50) per hour for verbatim transcripts;
- (4) An hourly rate of twenty dollars (\$20.00) for dubbing tapes, plus the actual cost of the tapes; and
- (5) In addition to the rates provided for in Article 3:
 - (a) An additional five dollars (\$5.00) per hour for transcribing the Public Works Committee minutes for submittal to the City no later than 12:00 noon of the fourth (4th) day following the Public Works Committee meeting.
 - (b) An additional five dollars (\$5.00) per hour for transcribing the Planning Commission and Historic Districts Review Board and minutes for submittal to the City no later than 12:00 noon of the fifth (5th) day following the aforementioned meetings.

D. 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.

E. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed. Failure to include the transcriptions with an original signature and the e-mailed copy will result in a delay of payment.

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

G. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

H. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **JUNE 30, 2019** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately 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. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall

have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax.

The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under 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. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. 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 understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin,

ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

19. Professional Liability Insurance. 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.

20. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

21. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof,

notify the legal counsel of the City.

22. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

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 a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: City of Santa Fe
 City Clerk's Office
 P.O. Box 909
 Santa Fe, New Mexico 87504

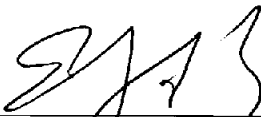
To the Contractor: Elizabeth Martin & Associates
 P.O. Box 321
 Medanales, New Mexico 87548

25. Authority.

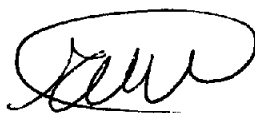
If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:


ERIK J. LITZENBERG, INTERIM CITY MANAGER
DATE: 7/5/18

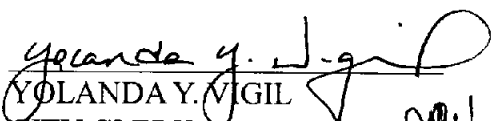
CONTRACTOR:


ELIZABETH MARTIN & ASSOCIATES

CRS#03325677003

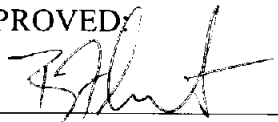
Registration #18-00134088

ATTEST:


YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:


GENO ZAMORA, INTERIM CITY ATTORNEY

APPROVED:

BRADLEY J. FLUETSCH, INTERIM FINANCE DIRECTOR

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Business Unit Line Item