

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 The Santa Fe Railyard Park Conservancy (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, on June 2, 2017 the Santa Fe Railyard Park Conservancy submitted a Request for Proposal to manage and implement the Santa Fe Railyard Park Programs. The Conservancy's proposal received approval from the Evaluation Committee.

IN CONSIDERATION of the above recital, the parties hereby agree to the terms and conditions set forth.

1. SCOPE OF SERVICES

During the term of this Agreement, the Contractor shall provide the following services for the City:

A. In Fiscal Year 2018/2019 the Santa Fe Railyard Park Conservancy shall manage and implement the Railyard Park Programs for the Santa Fe Railyard Park in Santa Fe, New Mexico

(1) The Santa Fe Railyard Park Conservancy shall manage and implement the items listed in Exhibit "A" attached hereto and incorporated herein.

(2) Manage and coordinate the work of all volunteers providing services and monitor their progress to meet deadlines.

(3) Prepare a yearly program budget based on costs for previous years.

(4) Hire independent consultants to provide project coordination services as needed.

(5) Continue to Implement a Membership Program.

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 shall comply with the Santa Fe Railyard Park Conservation Easement and Policies and Procedures.

C. The Contractor shall obtain approval from the Santa Fe Railyard Park Conservancy Board prior to implementing any programs.

D. The Railyard Park Conservancy Executive Director shall work with City staff prior to implementing any programs approved by the Santa Fe Railyard Park Conservancy Board.

E. 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.

F. The Contractor shall obtain any necessary permits through the City and or the State of New Mexico Construction Industries Division required for the construction associated with the Santa Fe Railyard Park.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered a sum not to exceed one hundred fifty thousand dollars (\$150,000) for fiscal year 2018/2019 inclusive of applicable gross receipts taxes.

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 and approval 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.

D. Contractor shall pay providers directly for reimbursement of construction services costs and project coordination services provided by independent consultants that are related to programs that are to be paid by the funds allocated for the Project.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City's Capital Improvement Program. 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 terminate on June 30, 2019, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 15 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, 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, then 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 contract.

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.

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 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:
Robert Siqueiros
Engineering Division
PO Box 909
Santa Fe, NM 87504-0909

Contractor:
Santa Fe Railyard Park Conservancy
805 Early Street, Suite 204 B
Santa Fe, NM 87505

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

CITY OF SANTA FE:

CONTRACTOR:
RAILYARD PARK CONSERVANCY


ALAN M. WEBBER, MAYOR

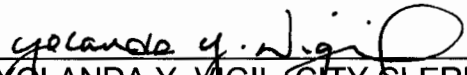

CHRISTY LEE DOWNS
EXECUTIVE DIRECTOR

DATE: 9/19/18

DATE: 7/31/2018

CRS #03-201187-00-3
City of Santa Fe Business
Registration # 17-00104155
18

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 7/25/18
APPROVED AS TO FORM:


CITY ATTORNEY 6/13

APPROVED:


FINANCE DIRECTOR 9/13

52857.510310
Business Unit Line Item

EXHIBIT A

Santa Fe Railyard Park Conservancy

Fiscal Year 2018/2019

Railyard Park Conservancy Areas of Focus:

- 1) Care for the Land: To advocate and provide resources for the maintenance and enhancement of the Railyard Park and Plaza landscape according to the highest standards of excellence.
- 2) Focus on the Visitor: To develop event and educational programming that provides opportunities for diverse visitor experiences that encourage repeat, year-round visitation.
- 3) Foster Community Ownership and Partnership: To build a network of volunteers who advocate for and work with the Railyard Park and Plaza in perpetuity.
- 4) Fund the Future: Continue to raise sufficient funds to support the ongoing horticultural care and enhancement of the Railyard Park.

Park Maintenance & Programming:

Railyard Park Conservancy (RPC) shall manage dedicated volunteer programs for park maintenance and interpretation.

Yardmasters. RPC supplements the City of Santa Fe's regular park maintenance by providing specialized care of the park's ornamental gardens; coordinates extensive community outreach programs; and maintains oversight of horticultural programs and design.

In Section Twelve of the Santa Fe Railyard Public Policies and Procedures: the RPC shall coordinate with the Parks Division Director and Parks staff to provide: annual long-term pruning for fruit trees and flowering crabapples; annual customized pruning program for all other trees, shrubs, vines and roses, depending on varieties; specialized pruning for native plant varieties; special management program for native meadows and open native grassland; integrated pest management in all gardens; plant replacements and/or substitutions; seasonal replacement of organic mulches; annual checking and reduction or removal of drip irrigation on many natives [once established]; annual checking of irrigation to trees and large specimens to make sure drip irrigation increases [as needed]; winterization programs for all gardens; spring cleaning for all gardens.

The RPC will provide: seasonal deadheading, shaping, and/or cutting back of native and ornamental vines, shrubs, grasses and perennials in all gardens; ongoing deadheading of ornamental shrubs and perennials; weeding in all gardens and native areas; ongoing customized fertilization programs for specific gardens; planning, planting, watering, tending, and harvesting annual plants in historic/teaching gardens; harvesting and distribution of fruits and vegetables.

Leveraged Funds and Shared Resources:

RPC works to leverage funds through volunteers and shared resources, keeping costs low while providing high quality service to the City of Santa Fe. Volunteers will assist with interpretation, workshops, the Outdoor Science Classroom, and numerous other RPC programs. The work done by RPC volunteers offsets a major portion of the Park's maintenance costs, resulting in significant savings for the City.

Implementation Plan Based on Scope of Services

Monthly Work Schedules for Each Program

Work Schedule Breakdown:

- 1) School Year (Sept 1, 2018 – May 15, 2019)
- 2) Summer Season (June 1, 2018 – Aug 1, 2019)

1.) School Year Work Plan: (Sept 1, 2018 – May 15, 2019)

A) Adult and Youth Volunteer Program: Volunteers are a necessity for such a large and dynamic park so volunteers are recruited and managed from various age groups, backgrounds and expertise levels. They are provided training and tools to complete projects in the Park year-round. Should the school or partner listed below end their participation, a comparable replacement organization will be recruited to continue the same level of effort.

- a. Yardmaster Volunteers – Every Tuesday and Thursday year-round from 9 – 11am, time changing seasonally.
- b. Master's Program (SFCC Charter School) - Every Friday from 1-3pm.
- c. Youth Works Program - Once a month, 9-11am
- d. Youth Shelters Program- Once a month, 9-11am
- e. Santa Fe Prep School's "Teen Action Program" – Every Thursday from 1 – 3pm
- f. New Mexico School for the Deaf's Community Service Program – Every Tuesday from Noon – 2pm
- g. Select Santa Fe Public School Service Project— Once a month in warmer months from 9 – 10:30am
- h. Community Service Open-Opportunity Day – as requested and scheduled..
- i. Volunteer Appreciation Christmas Potluck – One Saturday in December.

B) Community Education Program: RPC staff work with local public schools as well as private, charter and transitional schools to provide hands-on galvanizing science curriculum for 1st grade through 8th grade in compliance with SFPS CORE curriculum standards. Should the school or partner listed below end their participation, a comparable replacement organization will be recruited to continue the same level of effort.

- a. Railyard Art and Science Field Trip Partnership with SITE Santa Fe - Twice a month during the warmer season from 9am – Noon.
- b. Elementary School Outdoor Science Classroom – Up to twice a month from 9am – noon for 1st-6th grade classes from schools such as El Dorado, Cesar Chavez, Salazar, Wood Gormley, Rio Rancho (ABQ), Sweeney Elementary, Nava, Acequia Madre and Gonzales elementary schools.
- c. Middle School Outdoor Science Classroom – Up to twice a month from 9am – noon for 7th and 8th grade classes from schools such as Mandela Magnet School, Devargas, Tierra Encantada, Ortiz, Capshaw, Aspen, Gonzales, Santa Fe Indian School, Santa Fe Girl’s School, Santa Fe Prep and Mesa Vista middle schools.
- d. Community Waffle Garden: Demo included in every Park tour and Field Trip program;
- e. Native Bee House Program: Elementary and Middle School nesting material preparation workshops in Spring and Summer months.
- f. Children’s Outdoor Education Program: “Pop-Up Playground” child-constructed play area in conjunction with the celebration of the Railyard’s 10 Year Anniversary celebration.

C) Community Workshop Program: RPC will work with local field experts to provide free public workshops on both Saturdays and weekdays to train and educate the public on gardening techniques, water conservation and sustainability practices and encouraging habitat creation. Should the partner listed below end their participation or alter topic to be discussed, a comparable replacement organization or partner will be recruited to continue the same level of effort and relevant topic.

- a. Public Ecology Workshops – Twice a month in September, three times a month in March, April and May- occurring on both weekdays and weekends to reach a greater audience. Topics Include: Rose Pruning, Pollinator Landscape Design, Native Plant ID, mushroom cultivation, etc.

D) Community Garden Program: The organic food garden is rented to local residents with no access to land or no gardening experience to provide the opportunity to grow organic food in community with RPC staff support, resources and access to farming experts for advice at no charge. Should the partner or workshop theme listed below change, a comparable replacement partner and topic will be coordinated to continue the same level of effort.

- a. Community Food Garden Training Workshops and Community Gardening Days – Once month during growing season (May, Sept and Oct) from 10am – Noon. Topics include: seed starting, integrated pest management, cover crops, etc.

E) 10 Year Anniversary Celebration: September 15 & 16th – free public educational and interactive festival in the Park highlighting Santa Fe’s history and family-friendly activities all weekend (“Pop-Up Playground” and Sand Play Saturday children’s programming) along with historical educational stations.

F) Other: RPC will continue to offer these services and benefits in conjunction with its mission and goals.

a. Park Sustainability and Enhancement— Horticultural planning, training and execution to nurture plants and trees of the Park and fundraising to replace plants and shrubs as needed.

b. Railyard Art Project Committee – Monthly committee meetings year-round and facilitation of artist installation projects including managing installation, media coverage and promotion, opening artist’s receptions and de-installations. The RAP consists of 13 members from various backgrounds and disciplines within the local art community of Santa Fe.

c. Community Room – Rentals every weekend of the year when not otherwise reserved for large event use or by our partners including the SFRCC; open for weekday meetings or events as well.

2.) Summer Season Work Plan: (June 1, 2018 – August 1, 2018)

Should the school or partner listed below end their participation, a comparable replacement organization will be recruited to continue the same level of effort.

A. Adult and Youth Volunteer Program:

a. MFUGE Youth Conservation Corps – 25 corps members completing conservation projects in the Park from 10am – 3pm every day for up to 3 weeks in June – July.

b. Yardmaster Volunteers – Every Tuesday and Thursday year-round from 9 – 11am, time changing seasonally.

c. Youth Works Program - Once a month, 9-11am

d. Youth Shelters - Once a month, 9-11am

e. Community Service Open-Opportunity Day – One Saturday a month, 10am – Noon for those needing community service opportunities.

B. Community Education Program:

Should the partner listed below end their participation or alter topic to be discussed, a comparable replacement organization or partner will be recruited to continue the same level of effort and relevant topic.

- a. Community Waffle Garden - Students learn about the Zuni style of dry-farming in the desert utilizing "waffle gardens" and mutualistic vegetable plantings called the "Three Sisters" (corn, beans and squash). The waffle garden is also for planting heritage vegetables, herbs and flowers.
- b. Bee House – Native bee ID and Park tour with Dr. Carril in August from 10am – Noon.
- c. Children's Outdoor Education Program:
 - i. Sand Day Saturdays – Every Saturday from June through August, 10am – Noon, including celebration of International Mud Day
 - ii. Children's Nature Play Programs Teacher Training Workshop – Early Childhood Educators will receive CEU's (professional credits) for participating in this free training at the Park in the Fall.

C. Community Workshop Program:

Should the partner listed below end their participation or alter topic to be discussed, a comparable replacement organization or partner will be recruited to continue the same level of effort and relevant topic.

- a. Public Ecology Workshops – Twice a month in June, July and August on both Saturdays and weekdays from 10am- Noon. Topics Include: Rose Pruning, Pollinator Landscape Design, Native Plant ID, mushroom cultivation, etc.

D. Community Garden Program:

Should the partner or workshop theme listed below change, a comparable replacement partner and topic will be coordinated to continue the same level of effort.

- a. Community Food Garden Training Workshops and Community Gardening Days - One Saturday a month during growing season from 10am – noon.
- b.
- E. Other: RPC will continue to offer these services and benefits in conjunction with its mission and goals.
 - a. Park Sustainability and Enhancement— Horticultural planning, training and execution to nurture plants and trees of the Park and fundraising to replace plants and shrubs as needed.
 - b. Railyard Art Project Committee – Monthly committee meetings year-round and facilitation of artist installation projects including managing installation, media coverage and promotion, opening artist's receptions and de-installations. The RAP consists of 13 members from various backgrounds and disciplines within the local art community of Santa Fe.

- c. Community Room – Rentals every weekend of the year when not otherwise reserved for large event use or by our partners the SFCRSS; open for weekday meetings or events as well.

(E) Other:

- 1.) **Railyard Park Sustainability:** RPC provides the horticultural care, maintenance and development of the gardens in the Park and will continue to advocate for and provide resources to bolster this effort. RPC coordinates and trains volunteers and staff on the proper techniques to provide this care year-round, as without it, Railyard Park would not be the unique, sustainably-run showcase Park it is today. RPC continuously evaluates and troubleshoots any issues that arise in the Park by working with the City parks staff, trained horticultural specialists and referencing the meticulous plans and guides prepared by the architects and professionals who designed the Park.
- 2.) **Adopt-a-Park:** The horticultural scale of the Railyard Park is significantly greater than most other parks in the City Parks Division, with 150 different species of plants and over 7,000 plants. RPC currently has the City's only dedicated volunteer program for park maintenance and interpretation. Last year, the RPC strongly and publicly favored the City's consideration of an Adopt-A-Park program. The RPC believes this is a meaningful way to make city parks our own through a spirit of community pride and volunteerism. The RPC proposes to develop a leadership model, using emeritus board members, to mentor other Adopt-A-Park groups in the City. The Adopt-A-Park program could spawn robust volunteer programs that will help beautify and assist the City in the care of some of the city's nearly 70 parks.
- 3.) **Santa Fe Railyard Art Project (RAP):** A program of the RPC, the RAP is a collaborative effort between the City of Santa Fe, Santa Fe Railyard Community Corporation and community artists and art organizations, including Site Santa Fe and Axle Contemporary among others. The RPC coordinates this effort to bring temporary, juried public art projects to the Railyard Park and Plaza through hosting monthly meetings, managing art installations and de-installations, media coverage, and opening artist's receptions. RPC currently provides a small fund for artist stipends. The Park now hosts more projects per year than in any previous year, with 8 installations already approved for installation this year, anticipating more new proposals through the remainder of the year. RPC and the RAP committee will continue to call to the community for innovative, exciting art to display.
- 4.) **Community Room Rentals** - The RPC continues to rent this space to the public at a modest fee. The Community Room continues to be an affordable favorite for local as well as out-of-state residents looking for a beautiful and affordable event venue. Besides raising program funds, rentals of this room help increase awareness and goodwill in the community. Many people who discover the Park for the first time did so because they rented the room or attended an event there and realized what an affordable treasure it is. Throughout the year, the Community Room is generally rented every weekend. 2018 will see an increase in rentals on weekdays to be a support to other local businesses and organizations seeking an affordable, centrally located and beautiful meeting space.