

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 Sites Southwest, LTD Co, 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:

TASK 1: PROJECT KICKOFF

Contractor will meet with Santa Fe Metropolitan Planning Organization (MPO) staff to:

- I. *Confirm scope, project goals, deliverables, and schedule*
- II. *Identify needed background information*
- III. *Clarify staff and consultant roles and responsibilities*
- IV. *Tour representative areas in need of improvements and areas with recent improvements*

TASK 1 DELIVERABLES: Meeting Agenda and Minutes

TASK 2: DEVELOP SCORING MATRIX-During this task, Contractor will review the documents referenced in the RFP that recommend streetscape improvements in the metro area, including:

- I. *City of Santa Fe: Transition Public Right-of-Way Update (PROW), September 2017*
- II. *Santa Fe Metropolitan Bus Stop and Sidewalk Connectivity Assessment, June 2016*
- III. *Santa Fe Metropolitan Pedestrian Master Plan 2015-2040, August 2015*

Concurrently Contractor will review the following guiding documents and data sources to ensure we are working with the most up-to-date versions:

- I. *Americans with Disabilities Act (ADA)*
- II. *Manual on Uniform Traffic Control Devices (MUTCD)*
- III. *American Association of State Highway and Transportation Officials (AASHTO) and the Policy on Geometric Design of Highways and Streets*
- IV. *City of Santa Fe's adopted construction codes*
- V. *New Mexico Department of Transportation policies, standard plans and provisions, specifications for road and bridge construction, uniform design standards for streets and highways, and recent unit bid price tabulations*
- VI. *City of Santa Fe's Sustainable Santa Fe Plan (2008) and Sustainable Growth Management Plan (2010)*
- VII. *Most recent MPO transportation data, including automobile, bike, and pedestrian counts, as available*

Following review of the relevant documents, Contractor will develop a database of improvements recommended in the City's adopted plans, evaluate them with regard to the accessibility and pedestrian-oriented policies, and develop a draft matrix with criteria to rank the value of each pedestrian and safety improvement relative to anticipated cost, location, and usage levels. Where specific locations are not already identified in the plans, the Sites Southwest team will identify the most likely locations for those improvements and add those to the database. After review by MPO and/or City staff, Contractor will run several test scenarios to validate the evaluation criteria and resulting rankings, and develop a final evaluation matrix.

TASK 2 DELIVERABLES: Draft scoring matrix with explanation of value assignments; Final scoring matrix

TASK 3: IDENTIFY PROJECT LOCATIONS -Based on the results of the evaluation matrices created in the previous phase, the Contractor will develop a numeric and/or color-coded identification scheme and prepare an interactive GIS map identifying site locations for prioritized pedestrian safety improvements.

TASK 3 DELIVERABLES: Draft project list and map of top-scoring projects; Final project list and map of project locations ranked from highest to lowest priorities

TASK 4: PREPARE COST ESTIMATES - As part of the initial evaluation process, the Contractor will prepare generic scoping cost estimates for each of the types of improvements identified in the reviewed plans listed above, for use in the evaluation and ranking process. The estimates will include typical costs for pedestrian facility and safety improvements such as new and improved sidewalks, lighting, bus stops, bulb-outs, improved crosswalks, curb ramps, removal of pedestrian impediments, and sidewalk amenities such as seating, street trees, landscaping/buffering, bike racks, and trash receptacles. Following identification of specific ranked proposals, the Contractor will refine those costs for the highest ranked projects, or those likely to be constructed within a given timeframe (to be identified and agreed upon in cooperation with City/MPO staff).

TASK 4 DELIVERABLES: Matrix of costs for each component of pedestrian improvements

TASK 5: RECOMMENDATION FOR PEDESTRIAN SAFETY MEASURES-In addition to the list of physical improvements in Task 3, the Contractor will recommend additional safety measures that would improve overall pedestrian safety throughout the metropolitan area. These nonphysical improvements will include recommendations on best practices to how the City and MPO can use technology, public education, City enforcement, and additional policies to make the pedestrian environment safer. For example, the memo can include the best approach to initiating an educational campaign about the health benefits of walking while educating Santa Fe drivers about pedestrian right-of-way. Other safety measures could include reducing traffic speeds in areas with high pedestrian collision rates, adopting a daylighting policy that improves sight lines and pedestrian visibility by restricting parking near intersections, and establishing the recommended pedestrian advisory committee to help the City identify and address pedestrian safety issues and

opportunities.

TASK 5 DELIVERABLES: Draft memo with nonphysical recommendations; final memo

TASK 6: ASSESS RIGHTS-OF-WAY CONSTRAINTS-The Contractor will review possible rights-of-way issues and constraints. When the previous tasks are complete, the contractor will specify what is included in this task; labor is not to exceed \$10,000.

TASK 6 DELIVERABLES: Rights-of-way assessment

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1. Develop one scoring matrix for pedestrian safety improvements as noted in Task 2
2. Develop a list of pedestrian safety improvement projects as noted in Task 3.
3. Develop cost estimates as noted in Task 4.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed based on professional services provided and deliverables, such compensation not to exceed (\$35,211.28), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$2,530.81) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$37,742.09). 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.**

B. 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.**

C. 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.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **July 30th, 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 Legislature of New Mexico for the performance of this Agreement. If sufficient

appropriations and authorization are not made by the Legislature, 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 and the State of New Mexico 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 and the Risk Management Division of the New Mexico General Services Department by certified mail.

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:
Erick J. Aune, Officer Santa Fe MPO
P.O. Box 909
Santa Fe, NM 87504-0909.

To the Contractor:
Rosemary Dudley, Senior Planner/Project Manager
Sites Southwest
121 Tijeras NE, Suite 3100
Albuquerque, NM 87102

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 LITZENBERG, CITY MANAGER

DATE: 11/9/18

CONTRACTOR:

Sites Southwest

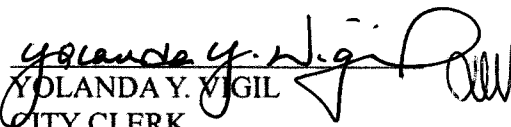

NAME AND TITLE

DATE: 11-14-2018

CRS#02-351711-00-5

Registration #18-00111973

ATTEST:


YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM: MDM 11/28

MDM 10/19
MDM 10/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

Mary McCoy 11/07
MARY MCCOY, FINANCE DIRECTOR

22305 @ 80% and 22306 @ 20%
Business Unit Line Item **510310**