

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 **the Santa Fe Community College**, 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:

- 1) The SFCC shall oversee the daily operation of the public access and education portion of the public, education, and government ("PEG") channels.
- 2) The SFCC shall retain a provisional employee to act as the Operation Manager of the SFCTV channel. The Operations Manager shall operate SFCTV consistent with the policies and procedures adopted pursuant to Section 1 of this Agreement and in accordance with all applicable laws.
- 3) If the SFCC chooses to have the Operations Manager teach credit courses or non-credit courses and the teaching of the courses does not interfere with duties of the Operations Manager, as outlined in this Agreement, such instruction shall be paid solely from SFCC funds. The president of the SFCC shall appoint the Operations Manager.
- 4) The Operations Manager shall be employed for the fiscal year beginning July 1 and ending June 30, of the current contract year for a salary designated in the annual budget, as approved by the Governing Body of the City. In the event the Operations Manager position becomes vacant, a search committee shall be appointed by the SFCC.

- 5) The search committee shall consist of no less than six (6) persons, including at least three (3) employees of the City of Santa Fe, and the City staff liaison to the Committee. The search committee shall interview prospective applicants and recommend the search committee's choices to the President of the SFCC.
- 6) The SFCC shall provide office space, and affiliated services, access to copy machines and secretarial support to the Operations Manager. Supplies, copying costs, telecommunications charges and equipment particular to the SFCTV channel programming or operation will be paid from City funds.
- 7) The SFCC shall provide television production studio space and use of equipment (i.e. cameras and editing bays) in house only, for community producers.
- 8) The SFCC shall maintain a transmission connection to the Comcast head end via fiber or microwave.

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

- 1) Provide support (i.e equipment and staff) to government television for events that may need additional assistance.
- 2) Produce and stream live community events annually that would be played later on SFCTV-16.
- 3) Provide original content for SFCTV-16 that must include local produced content created by students, community members and SFCTV-16.
- 4) Collaborate with other media entities in the community of Santa Fe.

2. **Compensation.**

- A. The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of seventy-one thousand dollars (\$71,000) in Fiscal Year 18/19. **The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$71,000) in Fiscal Year 18/19.**
- B. The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of seventy-one thousand dollars (\$71,000) in Fiscal Year 19/20. **The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$71,000) in Fiscal Year 19/20.**
- C. The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of seventy-one thousand dollars (\$71,000) in Fiscal Year 20/21. **The total amount payable to the Contractor under this Agreement, including gross receipts, shall not exceed (\$71,000) in Fiscal Year 20/21.**
- D. The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of seventy-one thousand dollars (\$71,000) in Fiscal Year 21/22. **The total amount payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed (\$71,000) in Fiscal Year 21/22.**
- E. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$284,000) for the term of this contract.**
- F. In addition, the SFCC will provide an annual proposal for the Capital Improvement PEG Fund, for use in purchasing upgrades of equipment. The City shall calculate amounts due under this provision after its receipt of payment from the television cable company, and shall notify SFCC of the total amount available for expenditure from these funds. Payment to SFCC under this provision shall be based on reimbursement for costs of equipment purchased by SFCC, and shall be made upon receipt and approval by the City of a statement detailing the equipment purchased. Funds remaining in the fund at the end of the City's fiscal year, which shall not have been spent within the fiscal year, shall be carried forward to subsequent fiscal years and added to new revenues that may become available to the Capital Improvement PEG Fund for use by SFCC
- G. Payment in Fiscal Years 18/19, 19/20, 20/21, and 21/22 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 Council. All invoices MUST BE received by the City no later than fifteen (15) 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.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE City. This Agreement shall terminate on **June 30, 2022** 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.

C. SFCC shall render a final report of the services performed up to the date of termination and a final billing for services rendered to the date of termination. SFCC shall also provide the City copies of any past programming that the City may request.

D. The City shall pay SFCC for the value of services satisfactorily performed through the date of termination, and for which compensation has not already been paid.

E. Upon termination of the Agreement, SFCC shall arrange to transfer and return to the City any equipment SFCC has purchased from Capital Improvement PEG funds, or shall reimburse the City for costs of such equipment that SFCC wishes to retain, according to the following schedule of conditions:

1) The City and SFCC shall negotiate the disposition of any assets purchased for and made part of this Agreement that had an initial individual purchase price in excess of \$5,000.

2) For assets with an individual purchase price less than \$5,000, SFCC shall return the asset or reimburse the City based on the age of the asset, as follows:

a) If the asset is less than six months old, SFCC shall return it to the City.

b) If the asset is six months to two years old, SFCC may retain the asset by reimbursing two-thirds (2/3) of the purchase price to the City.

c) If the asset is two to three years old, SFCC may retain the asset by reimbursing one-third (1/3) of the purchase price to the City.

d) If the asset is more than three years old, SFCC may retain the asset and no reimbursement shall be required to the City.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council or 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 City. 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 City 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 City 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 City of Santa Fe 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

Neither the City nor SFCC shall be required to indemnify the other for its own negligence, except as otherwise provided by law. Each party shall provide its own defense and be liable for its own negligence should a claim of liability based upon either negligence or intentional act be made by any third party against the City or SFCC or both.

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: Matt Ross, City of Santa Fe, Multimedia Office, P.O. Box 909, Santa Fe, NM 87501 mross@santafenm.gov

To the Contractor: Todd Lovato, Santa Fe Community College, 6401 Richards Ave. Santa Fe, NM 87507. Todd.lovato@sfcc.edu

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:


ALAN WEBBER, MAYOR

DATE: 12/10/18

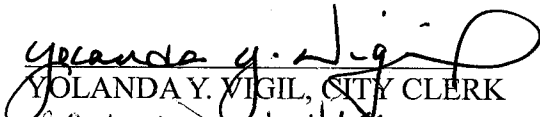
CONTRACTOR:

SANTA FE COMMUNITY COLLEGE

 - Interim CPO (John Apodaca)
NAME AND TITLE

DATE: 11/20/18
CRS# 01197245009
Registration # Exempt

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mag 11/14/18

APPROVED AS TO FORM:

 10/17
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:


MARY MCCOY, FINANCE DIRECTOR

12138.510300
Business Unit Line Item