

## 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 **Northern New Mexico Air Alliance (NNMAA)**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

**RECITALS**

A. On September 2, 2016, the City of Santa Fe and the United States Department of Transportation (USDOT) entered into a grant agreement under the Small Community Air Service Development Program. The USDOT has awarded the City a grant up to \$500,000 to assist in the City's efforts to address the air service needs of the community.

B. Under the terms and conditions listed in the USDOT Grant Document CFDA 20.930 FAIN: DOT-OST-2016-0037-0029, the Contractor has agreed to provide services to promote the Santa Fe Regional Airport through In-Kind contributions and/or alternative In-Kind contributions approved by USDOT; up to and not to exceed the Grant Project's Total Project Cash Costs, as outlined in Section (C.3.a) through (C.3.e) of the above stated UDOT grant document.

**IT IS AGREED BETWEEN THE PARTIES:****1. Scope of Work.**

- A. The Contractor shall perform the following work:
- 1) Provide marketing services to promote use of the Santa Fe Regional Airport in both local and destination markets.
    - a) Services include digital and print advertising, social media and public relations and other marketing activities.
  - 2) Administer air service development studies to expand the number of destinations served by the airport.
    - a) Allow the City up to 60 days to review air service development recommendations and make a determination on whether to pursue the new air service.
    - b) NNMAA agrees to indemnify and hold without harm the City for any service recommendations rejected by the City.
  - 3) Solicit and accept contributions to support the Santa Fe Regional Airport from outside entities and the City of Santa Fe Tourism Department.
  - 4) NNMAA will provide matching funds for some of the City's grant activities to include airline minimum revenue guarantees (MRGs), air service development studies and marketing initiatives.
    - a) NNMAA will pay for all costs associated with marketing, and other goods and services rendered under this Agreement, and provide matching funds relating to costs for minimum revenue guarantee activities, which are reimbursable up

to a maximum of fifty percent (50%) of eligible costs under the ADSP and/or ASAP grant activities.

- b) NNMAA understands and agrees costs associated with air carrier incentives, marketing, and other goods and services are not reimbursable under the ADSP grant without a revenue guarantee, subsidy, or financial incentive agreement between the NNMAA and an air carrier.

5) Agreements with Third Parties

- a) Ensure that all services provided by NNMAA and third parties related to one of the City's Airport grants are consistent with Grant Agreements.
  - i) Ensure that third party agreements incorporate grant documents by reference into the agreements, and any amendments or modifications;
  - ii) The City may request a copy of any agreement executed between the NNMAA and any consultants or other parties performing services related to this PSA.
- b) Submit detailed marketing plan to Airport Manager quarterly for approval prior to expenditures.
  - i) Include the types of media to be used, advertisement creative, messaging, projected expenditures for each marketing component, and timeline for release of the marketing/advertising material;
  - ii) Expenditures not in plan may not be eligible for reimbursement;
  - iii) No expenditure on alcohol or any infrastructure expenses relating to alcohol sales/distribution is eligible for reimbursement.

6) Reports

- a) Provide Grant Project Reports to Airport Manager, including milestones as set forth in the grant agreement, on a quarterly basis, due on or before the following dates: October 1, January 1, April 1, and July 1. Grant Project Reports shall include the following:
  - i) Brief narrative about the status and progress towards the scope described in Grant Agreements;
  - ii) Name and scope of any consultants involved in the provision of services toward fulfillment of this Agreement;
  - iii) Details of marketing or promotional activities undertaken in conjunction with this Agreement and results of the marketing activities.
- b) Provide a final report to Airport Manager in a format required by grants within two (2) months after expiration of Grant Agreements or conclusion of the project, whichever occurs earlier.
- c) Financial Report
  - i) Annually by June 30th, submit CPA reviewed financial statements to the City.

B. Performance Measures.

Contractor shall substantially affect the following Performance Measures:

Increase in commercial air travel passengers and flights.

## 2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work up to two hundred four thousand one hundred eighty-eight dollars (\$204,188) including applicable gross receipts taxes, in which 50% shall be reimbursed back to the City. **In aggregate, the amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one hundred two thousand ninety-four dollars (\$102,094). 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 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.)

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.

- i. Detailed statement accounting for services performed and expenses incurred shall include:
  - a. Description of services rendered
  - b. Delivery date(s) of services
  - c. Proof of payment to any third parties providing services related to this Agreement.
  - d. Amounts reimbursable from grants including all grant required documentation.
- ii. All invoices for services provided related to a grant, must be submitted no later than the expiration of the Grant Agreements as applicable.
- iii. All marketing related services shall be paid in full to NNMAA without requiring matching funds from NNMAA unless item (2 C v.) shall occur.
- iv. All minimum revenue guarantee services shall be paid in full to NNMAA, and the City shall seek reimbursement by invoicing 50% of eligible costs to NNMAA, payable within 30 days after invoice receipt unless item (2 C v.) shall occur.

- v. All required grant matching funds and all ineligible costs are the sole responsibility of NNMAA, and all rejected costs identified from the Granting Agencies shall be reimbursed from the NNMAA to the City within 30 days of rejection notification from the City.

**3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2020** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations) and is renewable for up to two (2) additional years. 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 City 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 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. 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 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

Santa Fe City Code, 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. Other Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name

the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

**21. 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.

- a. Annually by June 30th, Contractor shall submit CPA reviewed financial statements to the City.

**22. 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.

**23. 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.

**24. 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.

**25. 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:

Mark Baca, Manager  
Santa Fe Regional Airport  
121 Aviation Drive  
Santa Fe, NM 87507  
mdbaca@santafenm.gov

To the Contractor:

Stuart C. Kirk, Executive Director  
Northern New Mexico Air Alliance  
P.O. Box 8133  
Santa Fe, NM 87504  
stuart@flysantafe.com

**26. 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.

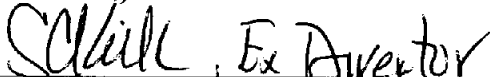
CITY OF SANTA FE:

  
ALAN WEBBER, MAYOR

DATE: 12-20-18

CONTRACTOR:

Northern New Mexico Air Alliance  
(NNMAA)

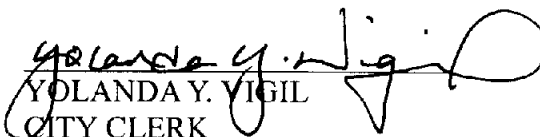
  
NAME AND TITLE

DATE: 12/19/18


CRS# 03347048000

Registration # 18-00142923

ATTEST:

  
YOLANDA Y. VIGIL  
CITY CLERK  
cc mtg. 12/12/18

APPROVED AS TO FORM:

  
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

  
MARY MCCOY, FINANCE DIRECTOR

Expense: 52822.510300 / Revenue: 51821.490550  
Business Unit Line Item