

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (Agreement) is made and entered into by and between the CITY OF SANTA FE (the City) and PRESBYTERIAN MEDICAL SERVICES, INC., d/b/a LA COMUNIDAD DE LOS NIÑOS, a New Mexico a non-profit corporation in good standing in the State of New Mexico (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, the 2017 Legislature of the State of New Mexico (State) appropriated Eighty-Four Thousand Dollars (\$84,000.00) in state funds (the Appropriation) to plan, design and construct a retaining wall at La Comunidad de los Niños Head Start Center in Santa Fe identified as Project No. A-2507 (the Project); and

WHEREAS, the reversion date for the Appropriation is June 30, 2020; and

WHEREAS, the City has reviewed the Project and agreed in principle to be the fiscal agent for the Appropriation; and

WHEREAS, the City has determined that it is in the best interest of the welfare of the citizens of the City of Santa Fe to enter into this Agreement for the purposes of effectuating the City's role as fiscal agent for the Appropriation; and

WHEREAS, the City owns in fee simple the land on which the improvements to be paid for by the Appropriation will be located; and

WHEREAS, for the foreseeable future, the City will continue to own the improvements and/or equipment to be paid for by the Appropriation; and

WHEREAS, the Contractor shall provide the City project management services for the expenditure of the Appropriation, as herein described; and

WHEREAS, the Appropriation, this Agreement, and the City's role as fiscal agent for the Appropriation as described herein are in compliance with Section 14, Article IX of the New Mexico Constitution (the "Anti-Donation Clause"), because the Appropriation will be expended on actual costs for the construction or improvement of City-owned property, for the benefit of City residents;

WHEREAS, as a condition precedent to this Agreement, the City must first enter into a grant agreement (Grant Agreement) with the State of New Mexico Department of Finance and Administration (DFA), to enable the City to serve as fiscal agent to the Appropriation; and

WHEREAS, any unexecuted prior draft agreements concerning the same Appropriation have no force or effect;

NOW THEREFORE, the Parties enter into this Agreement as follows:

1. **Scope of Services.**

The Contractor shall serve as the project manager for the Project, and shall coordinate and oversee all aspects of the planning, design and construction of a retaining wall at La Comunidad de los Niños Head Start Center in Santa Fe, on land owned by the City of Santa Fe. The Contractor shall submit periodic project reports to the City in accordance with Article 3 of this Agreement.

2. **Performance Measures.**

A. The Contractor represents that it possesses the personnel, experience, and knowledge necessary to perform the services described under this Agreement.

B. 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.

3. **Project Reporting.**

A. **Monthly Project Manager Status Reports.** The Contractor shall submit Project construction status reports (Monthly Project Manager Status Reports) to the City's Public Works Director and the City's Grant Administrator by the 15th day of each month during the construction and implementation phase of the Project in order to facilitate the City's Capital Project Monitoring System (CPMS) and Grant Agreement reporting requirements. The Monthly Project Manager Status Reports shall detail for the preceding month: the Project construction work; the methods and procedures used to implement the Project; a description of any problems or delays that have occurred; and a detailed accounting of Project expenditures including, without limitation, the name of and financial obligation to sub-contractors and vendors, and the total amount of the Appropriation expended to date. Monthly Project Manager Status Reports shall be submitted to the City until such time as the full amount of the Appropriation has been expended, the Project's construction is complete, and the Project is accepted by the City.

B. **Quarterly Service Value Statements.** The Contractor shall submit Quarterly Service Value Statements for the duration of the Agreement. For Quarter 1 January 1 through March 31 the Quarterly Service Value Statement is due by April 30. For Quarter 2 April 1 through June 30 the Quarterly Service Value Statement is due by July 31. For Quarter 3 July 1 through September 30 the Quarterly Service Value Statement is due by October 31. For Quarter 4 October 1 through December 31 Quarterly Service Value Statement is due by January 31.

C. **Final Project Manager Report.** The Contractor shall submit the final report (Final Report) to the City's Public Works Director and the City's Grant Administrator within 10 days of the Project's reversion date, or within 10 days of early termination, whichever first occurs. In the Final Report, the Contractor shall certify that all Appropriation funds have been completed and funds expended in accordance with all of the requirements of this Agreement, and in compliance with all applicable state and regulatory requirements.

D. **Requests for Additional Information/Project Inspection.** The City may require additional information as deemed necessary and the City and the DFA and shall be permitted by the Contractor to conduct onsite inspections of the Project. The Contractor shall respond to requests for information regarding the Project within a reasonable period of time.

4. **General Project Conditions.**

A. **Compliance with Law and Procurement Code.** Appropriation funds must be spent in accordance with applicable laws, regulations, policies, and guidelines, including but limited to, the City's Procurement Code (a.k.a, the City's Purchasing Manual).

B. **Certification of Non-Interest.** By the time the Contractor submits its first application for payment, the Contractor shall certify to the City that no member, officer, or employee of the City (or its designees or agents), no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure (or for one year thereafter) shall have any interests (direct or indirect) in the Contractor or any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement.

C. The Contractor shall certify that such a Certification of Non-Interest provision shall be included in all contracts and subcontracts in connection with the Project.

D. The Contractor shall at no time convert any property acquired or developed with

Appropriation funds to uses other than those specified for the Project under this Agreement.

5. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily Performed, a sum not to exceed Eighty-Four Thousand dollars (\$84,000.00), inclusive of gross receipt taxes, on a reimbursement basis for eligible expenses under the Appropriation. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$84,000.00). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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.

6. 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 7 (Termination), or paragraph 8 (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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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

- 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.

24. 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

25. 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.

26. 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.

27. 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.

28. 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

rates and prevailing fringe benefit rates issued for the project.

2. Contractor shall certify to the City that no funds have been paid or will be paid by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of this agency or body in connection with this Agreement, the Appropriation, of the awarding of any Third Party Obligation. Contractor shall incorporate into all subcontracts the language set forth in this paragraph prohibiting lobbying to be included in the award documents for all sub awards including but not limited to subcontracts, loans and cooperative agreements. Contractor shall certify that such language has thus been incorporated.

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:

CONTRACTOR:
PMS


ALAN WEBBER, MAYOR


STEVEN C. HANSON, PRESIDENT & CEO


DATE: 3/25/19

DATE: 4-3-19^e

CRS#017-946696-002

Registration # 18-73592

ATTEST:


YOLANDA Y. MIGIL, CITY CLERK
cc mtg 3/13/2019

APPROVED AS TO FORM:

 2/13
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:


MARY MCCOY, FINANCE DIRECTOR

32511.572970

Business Unit Line Item

La Comunidad PSA A2507.doc

EXHIBIT A

GRANT AGREEMENT