

ORIGINAL

ITEM # 19-0951

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 **Christus St. Vincent, (CSV)** hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

WHEREAS, the 2019 Legislature of the State of New Mexico (State) appropriated Fifty Thousand Dollars (\$50,000.00) in state funds (the Appropriation) to plan, design and construct a facility for families with a behavioral health or substance abuse crisis, including a segregated emergency track, behavioral health unit upgrades and partial hospitalization facility at Christus Saint Vincent Regional Medical Center in Santa Fe, identified as Project No. 19-D3211 (**Exhibit A**); and

WHEREAS, the reversion date for the Appropriation is June 30, 2023; 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 Contractor shall provide the City project management services for the expenditure of the Appropriation, as herein described; and

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

A. The Contractor shall serve as the project manager for the Project, and shall coordinate and oversee all aspects of the planning, designing and construction of a facility for families with a behavioral health or substance abuse crisis, including a segregated emergency track, behavioral health unit upgrades and partial hospitalization facility, at Christus Saint Vincent Regional. Specifically these funds will be used for Phase 1 Planning. (**Exhibit B**).

B. **Performance Measures.**

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

2. 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.

2. **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.

3. 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.

4. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed a sum not to exceed Fifty Thousand Dollars (\$50,000.00) including gross receipts tax. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$50,000.00). 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.

5. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on June 30, 2023 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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:

City of Santa Fe:
Attn: David A. Chapman
P.O. Box 909
Santa Fe, NM 87504-0909
dachapman@santafenm.gov

To Contractor:

Christus Saint Vincent Regional Medical Center
455 St. Michaels Drive
Santa Fe, NM 87505
lillian.montoya@stvin.org

29. 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.

30. Additional Terms

A. State Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico (Legislature) for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or early termination of this Agreement by the City or the DFA/LGD.

B. General Conditions and Restrictions.

1. The Project must be implemented in accordance with the New Mexico

Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. For every contract or project in excess of sixty thousand dollars (\$60,000), the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. The Contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment commuted at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

2. The Contractor warrants that no officer or employee of the City or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Agreement, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. Contractor shall incorporate into all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

3. 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.

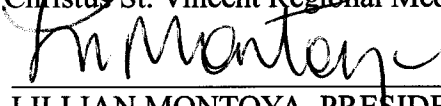
CITY OF SANTA FE:


JAREL LEPAN HILL, CITY MGR.

DATE: 12/5/19

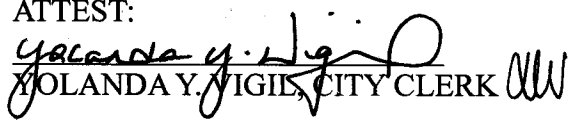
CONTRACTOR:

Christus St. Vincent Regional Medical Center


LILLIAN MONTOYA, PRESIDENT & CEO

DATE: 12/12/19
CRS# 01-505-918009
Registration # 19-00061869

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

 10/23/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:


MARY MCCOY, FINANCE DIRECTOR

3209980.572960

Business Unit Line Item

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