

# CONTRACT

## 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 **Santa Fe Conservation Trust** 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:

#### **Scope of Work.**

The scope is for the development of a “sustainable Safe Routes to School Program for Kindergarten through 8<sup>th</sup> grade schools within the Santa Fe Public School District” including that of an established Program Coordinator for the duration of the grant, who shall provide oversight, leadership and general management of the program. The City of Santa Fe is fully responsible for the management of the reimbursable grant and it is expected that all work be coordinated with the City to be in full compliance with the federal grant requirements during the entirety of the grant related program.

The City is host to the Santa Fe Metropolitan Planning Organization (MPO) that includes three full time employees. The MPO plays a significant role in the development of a variety of regional transportation and transit plans that serve the metropolitan area. MPO staff will be providing planning services and technical support during two years of the program.

It is the intent of the City of Santa Fe to develop the building blocks of a sustainable SRTS program similar to the successful program developed in Las Cruces, New Mexico and in other communities in the country.

**The Contractor shall perform the following work listed below and further detailed in the attached RFP 20/09/P Safe Routes to School proposal, schedule and cost estimates (revisions attached):**

#### **Scope of Services**

The Contractor will provide technical support, coordination and documentation/plan formatting services in the context of the City’s procurement requirements and federal, state transportation planning requirements included in the FHWA’s Transportation Alternatives program, by assisting with development and integration of the following Safe Routes to School strategic goals and objectives:

Develop a sustainable Safe Routes to School program for Kindergarten through 8<sup>th</sup> grade schools within the Santa Fe Public School District that focuses on the core values of Safe Routes to School including education, encouragement, equity, engineering/design, and evaluation. The program shall include but is not limited to the following:

1. an educational component that develops and/or utilizes engaging and age appropriate materials and curricula around pedestrian & bicycle safety, health and wellness benefits from walking and bicycling, the broad range of transportation choices available in the community, driver responsibility and awareness, and other relevant information to address specific local needs as identified;
  2. an encouragement component that includes school specific Walk and Bike to School maps, regular activities and events, such as Walk and Roll to school day, Walking Wednesdays, Two-wheel Tuesdays, and other events and programs as developed by the individual schools, such as a Walking School Bus and/or Bicycle Train program, to incorporate SRTS into each school's unique culture;
  3. an equity component to ensure underserved and vulnerable populations are engaged and empowered, and unique barriers that underserved populations face are identified, analyzed, and addressed;
  4. an engineering component to evaluate walking and biking routes to schools and make recommendations to city traffic engineers and Santa Fe School District leadership for infrastructure projects to make the streets, sidewalks and walkways safe for students and the community;
  5. an evaluation component to assess, review and analyze program effectiveness, monitor outcomes, conduct parent and student survey's, and employ the assistance (via stipends) of teachers and school administrators to assist in data gathering and monitoring of transportation patterns at each school; and
  6. an enforcement component that is respectful to community values and public engagement so as to coordinate and facilitate traffic safety, relationship building with local law enforcement, crossing guards, school administrators and the general public.
7. Establish a local SRTS Team/Coalition to guide the development of the Action Plan and implementation strategies identified in the local SRTS Action Plan and program as a whole.
  8. Develop a Santa Fe Safe Routes to School Action Plan within the first year. The Action plan shall, at a minimum include the following:
    - a) Safe Routes to School Program Overview including why the program is important and demonstrable benefits as evidenced from existing programs
    - b) Existing conditions inventory of the selected schools
      - i. Policies and Programs
      - ii. Arrivals and Departures
      - iii. Roadway infrastructure and any land use contributing factors within ½ mile of each school
      - iv. Base Maps
    - c) Public Engagement Initiatives (with consideration of safe COVID-19 practices)
    - d) Recommendations
      - i. Physical Improvements including School Improvement Maps
      - ii. Operational Measures
      - iii. Core Value Recommendations
    - e) Action Steps – Based on recommendations specific actional objectives with associated time frames and cost estimates
    - f) Resources and Recommendations: Throughout the project the team is asked to pursue any relevant and appropriate training opportunities for the program manager, local champions, and school representatives.

The selected Contractor will also:

1. Assist the City of Santa Fe and the MPO with the development of a refined scope of work that details an agreed upon strategy for the development of a Safe Routes to School Program. Please note the initial proposal and subsequent scope of work was developed pre-COVID-19 era. We recognize that substantive changes in public engagement, travel and training and other such project elements are going to require innovative, safe approaches. We look forward to working with a team to develop creative solutions and opportunities during this time.

2. Incorporate relevant existing public input data and recent public input efforts conducted by the City, Schools and MPO to inform additional public engagement efforts.
3. Incorporate any existing relevant planning initiatives that may leverage and inform SRTS planning and programing.
4. Assume additional expenditures outside of the consultant contract such as local stipends for SFPS staff and training expenditures for key stakeholders to be managed by the Safe Routes to School Coordinator or team and other items derived from the development of the Action Plan.

The plan will consider the general needs of the traveling public as well as the specific needs of particular sub- groups including, but not necessarily limited to, school bus operators and users, private motorists, transit users, businesses, students in Grades 9-12 and higher education, elderly people, and people with disabilities.

The plan will include a financial component that describes the costs, both capital and operating, of undertaking plan recommendations and will recommend implementation strategies and metrics for plan elements, including discussion of priorities, staffing levels, levels of service and timing issues.

## 2. **Compensation.**

**MULTI-YEAR – 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 \$50,000 in FY21. **The total amount payable to the Contractor under this Agreement including expenses, \$50,000 in FY21.**

**MULTI-YEAR – 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 \$160,000 in FY22. **The total amount payable to the Contractor under this Agreement, including expenses, \$160,000 in FY22.**

**MULTI-YEAR – 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 \$83,006 in FY23. **The total amount payable to the Contractor under this Agreement, including expenses, \$83,006 in FY23.**

**The total amount payable to the Contractor under this Agreement including expenses, is not to exceed \$293,006. 00.**

B. Payment in FY21, FY22, and FY23 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.

## 3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30<sup>th</sup> 2023** unless terminated pursuant to paragraph 4 (Termination),

or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, the contract term for this professional services contract, including extensions and renewals, shall not 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. Commercial General Liability** insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

**B. Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

**C. Broader Coverage and Limits.** The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

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

**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. 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.

**24. 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.

**25. 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

**26. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:  
Erick Aune  
Santa Fe MPO Officer  
PO Box 909  
Santa Fe, NM 87504

To the Contractor:  
Sarah Noss, Executive Director  
Santa Fe Conservation Trust  
PO Box 23985  
Santa Fe NM 87502

**27. 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: Mar 1, 2021

CONTRACTOR:

Santa Fe Conservation Trust



Sarah Noss, Executive Director

DATE: 12-21-20

CRS# 022 665 3300 1

Registration # 225663

ATTEST:



CITY CLERK

GB MTG 02/24/2021

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## COST RESPONSE FORM

Description	Type	Quantity	Cost per Item
Project Management	Hour	280	\$65.00
Strategic Implementation Plan	Hour	1310	\$65.00
Community Engagement	Hour	1310	\$65.00
Stakeholder Engagement	Hour	292	\$65.00
GIS/Mapping	Hour	341	\$88.00
Web Developments	Hour	57	\$88.00
Walk/Bike Route Evaluations	Hour	140	\$143.00
Other appropriate costs associated with scope/task implementation	Unit	1	\$30,482

All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A (as amended by any current RFP amendments for the period specified).

Option Year 1: (03/01/2021 thru 06/30/2021) Price: \$50,000

Option Year 2: (07/01/2021 thru 06/30/2022) Price: \$160,000

Option Year 3: (07/01/2022 thru 06/30/2023) Price: \$83,006