

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 **Corporate Cost Control** hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall provide the following services for the City:

A. Monitor and exercise cost control for the City of Santa Fe where a potential liability for unemployment compensation payment rests with the City of Santa Fe. The principal duties of the Contractor shall be:

- (1) Receive all claims from the NM Department of Workforce Solutions;
- (2) Distribute all notification of claims, determinations and appeals hearings to City of Santa Fe customers; notice must be provided to City of Santa Fe timely, (i.e., allowing reasonable time for response);
- (3) Provide all related documentation/information to NM Department of Workforce Solutions provided by City of Santa Fe relative to each claim;
- (4) Monitor all unemployment claims;
- (5) Represent the City of Santa Fe on disputed claims, including but not limited to preparing necessary witnesses for the hearing;
- (6) Periodically issue reports on the claims;
- (7) Train City of Santa Fe employees in the procedures and orderly flow of information relative to unemployment compensation activity in the State of New Mexico;
- (8) Maintain a cost control program relative to unemployment compensation for the City of Santa Fe;
- (9) Maintain current contact information with Workforce Solutions with respect to all information necessary to insure prompt and proper notification to the City of Santa Fe; and
- (10) Those additional items set forth in Exhibit A, Contractor's Unemployment Cost Management Services Schedule.

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

To Provide coaching and preparation for every unemployment hearing.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of one thousand twenty-five dollars (\$1,025.00) per quarter with an additional per diem cost of \$150.00 per phone appearance. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$22,700). 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.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2025** unless terminated pursuant to paragraph 4 (Termination), or paragraph five (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's

liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of 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 may subcontract any portion of the services to be performed under this Agreement with prior written notification to 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. Notwithstanding the foregoing in this Section 11, the City's access license for the training materials and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Contractor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any training materials associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Contractor or its suppliers or licensors made accessible or furnished to the City shall be and remain the property of the Contractor or such other party, respectively. Contractor has a limited, non-exclusive license to access and use the City Data as provided to Contractor, but solely for performing its obligations under this Agreement and in confidence as provided herein.

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. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

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. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured under the general liability and auto liability policies 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 associated with the services provided by Contractor under this Agreement shall be subject to inspection by the City in accordance with Contractor's standard security procedures and during normal business hours, if the City wishes to conduct its inspection at a Contractor facility. 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. If Contractor has reason to believe that the City has not been, or may not be, in compliance with the

terms of the Agreement, any applicable law or Exhibit A, Contractor may request that the City give to Contractor an adequate assurance that it has corrected the problem and is otherwise complying with the terms of the Agreement (including this Amendment and Exhibit A). Contractor shall be permitted, at its sole option and election, and without liability to the City, to suspend or terminate the Services until such time as Contractor receives such adequate assurance.

22. Indemnification and Limitation of Liability.

The Contractor shall defend, indemnify and hold harmless the City from all third party 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.

THE CITY AGREES THAT CONTRACTOR'S TOTAL AGGREGATE LIABILITY UNDER THE AGREEMENT, REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, IS LIMITED TO DIRECT DAMAGES, WHICH SHALL NOT EXCEED THE AMOUNT PAID BY THE CITY TO CONTRACTOR UNDER THE AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INCREASED DAMAGES, OR DAMAGES TO BUSINESS REPUTATION, DAMAGES ARISING FROM LOSS OF BUSINESS WITH THIRD PARTIES, OR LOSS OF PROFITS FROM TRANSACTIONS WITH THIRD PARTIES, OR WILLFUL INFRINGEMENT BY THE OTHER PARTY, WHETHER ANY OF THE FOREGOING ARE FORESEEABLE OR NOT, AND HOWEVER CAUSED, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES OR LOST PROFITS MIGHT ARISE.

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 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.

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: Human Resources
Bernadette Salazar
HR Director
200 Lincoln Ave.
Santa Fe, New Mexico 87504
bjsalazar@santafenm.gov

To the Contractor: Corporate Cost Control
Dane Swenson
Director of Client Solutions
501S. New York Ave.
Winter Park, FL 32789
dswenson@corporatecostcontrol.com

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.

28. Warranties and Disclaimers.

THE WARRANTIES IN THIS AGREEMENT ARE THE ONLY WARRANTIES CONTRACTOR HAS GIVEN THE CITY WITH RESPECT TO THE SERVICES OR CONTRACTOR'S MATERIALS. BECAUSE THE SERVICES INVOLVE CONVEYING INFORMATION PROVIDED TO CONTRACTOR BY THE CITY AND OTHER SOURCES, CONTRACTOR CANNOT AND WILL NOT, FOR THE FEE CHARGED FOR THE SERVICES, BE AN INSURER OR GUARANTOR OF THE ACCURACY OF THE SERVICES OR THE DATA CONTAINED IN ITS DATABASES. EXCEPT TO THE EXTENT SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONTRACTOR SERVICES OR ANY OTHER MATERIALS (TANGIBLE OR INTANGIBLE) SUPPLIED BY CONTRACTOR HEREUNDER. IN ADDITION, CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, OR NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT, REPRESENT OR UNDERTAKE THE OPERATION OF THE CONTRACTOR SERVICES TO BE UNINTERRUPTED OR ERROR-FREE. ADDITIONALLY, CONTRACTOR DOES NOT GUARANTEE OR WARRANT A PARTICULAR OUTCOME OR SUCCESS BASED ON ITS PERFORMANCE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, SITUATIONS WHERE CONTRACTOR HAS BEEN PROVIDED INACCURATE INFORMATION BY THE CITY WHICH

CONTRACTOR IN TURN PROVIDES SUCH INACCURATE INFORMATION TO AN AGENCY.

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:
Corporate Cost Control

Jarel LaPan Hill
Jarel LaPan Hill (Jun 14, 2021 13:06 MDT)

JAREL LAPAN HILL,
CITY MANAGER

Bradley J. Goff

BRADLEY J. GOFF
DIRECTOR, CONTRACTS

DATE: Jun 14, 2021

Director, Contracts
TITLE

DATE: June 8, 2021
CRS#26-3837199

Registration # 230450

ATTEST:

Kristine Mihelcic

KRISTINE BUSTOS-MIHELICIC, XIV
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 8, 2021 13:22 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Alexis Lotero, Assistant Finance Director
Alexis Lotero, Assistant Finance Director (Jun 9, 2021 09:10 MDT)

MARY MCCOY, FINANCE DIRECTOR

Org. Name/Org#.
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