

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and the **The Regents of the University of New Mexico's on behalf of its Center for Anderson School of Management Administration**, hereinafter referred to as the "Contractor," each a "Party", and collectively, the "Parties". This Agreement shall not become effective until approved by the City.

WHEREAS, the Chief Procurement Officer of the City has made the determination that this Agreement is in accordance with the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, § 13-1-95.2.E; and NMSA 1978, § 13-1-111.

WHEREAS, the Contractor is one of such requisite and qualifications and is willing to engage with the City for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in the Agreement; and

WHEREAS, the Contractor does hereby accept its designation as a research consultant, rendering services related to survey development, training and data collection for the City, as set forth in this Agreement; and

WHEREAS, the Parties agree that the performance of the professional services is for a period of one year, or until April 1, 2023, whichever comes first, as directed by the City.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Scope of Work.

The Contractor shall work with the Community Health and Safety Department and the Community Health and Safety Task Force by providing the following services:

A. City-Wide Survey:

The survey will be based on guidance from resolution 2020-29; the task force will provide an opportunity for a broad cross-section of the Santa Fe community to give advice and offer their experiences and ideas that will help to improve the quality and consistency of community health and safety and other priorities as approved by the task force. In order to reach a 'broad cross-section of the Santa Fe community' outreach will be conducted to the populations of interest with the following specifications.

- 1) A mix of a random sample of residents conducted by BSP Research, a sub-contract nationally recognized survey firm (N of approximately 300);

- 2) Adding an open-access link to be distributed by community partners to specific segments of the community to help add hard to reach communities into the overall survey sample (N of approximately 200);
- 3) Incentives are included for participating community members.

B. Focus Groups and Personal Interviews:

Focus groups and individual interviews would fill in any gaps with hard to reach communities not represented adequately in the City-wide survey.

- 1) Outreach to underrepresented communities may include but are not limited to people of color, residents who are on probation/parole, immigrants, youth and other responders of interest;
- 2) Moderation of sessions by professionals in a mix of in-person and online sessions;
- 3) Approximately 6 focus groups and 20 individual interviews, may be adjusted depending on need;
- 4) Incentives are included, at a larger rate, for participating community members.

C. Photo-Voice/Qualitative Diaries with Youth (ages 16-18):

Photo-Voice/Qualitative Diaries with youth is intended to include youth adults/teenagers in the research process, and would ideally include leaders from this age group who may be interns or who are connected to the City through other channels.

- 1) Recruitment of young adults/teenagers to participate in the research process;
- 2) Training for young adults/teenagers on survey design and data collection;

Incentives are included for participating young adults/teenagers.

D. Report. The Contractor shall provide a report summarizing the results of the survey, focus group, and diaries to make recommendations about the quality and consistency of community health and safety

2. Standard of Performance; Licenses.

A. The Contractor represents that Contractor 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, and its employees.

3. Compensation.

A. The City shall pay to the Contractor in full payment for services sufficiently performed based upon the SCOPE of WORK listed above, such compensation in the amount of \$90,000.00, including gross receipts tax. **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 statement for all services performed. If the City finds that the services are not acceptable, within thirty (30) 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 (30) 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.

4. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **April 1, 2023** unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (Appropriations). The City reserves the right to renew the contract on an annual basis by mutual Agreement, signed by authorized representatives of each Party, not to exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

5. **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 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 PARTIES' OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY A PARTY'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.

6. 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.

7. Status of Contractor.

The Contractor and its employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its 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.

8. 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.

9. Subcontracting.

Aside from subcontractors already identified herein, 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.

10. 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.

11. Confidentiality.

Any "Confidential Information", meaning any non-public information of a disclosing Party which is disclosed in writing and clearly marked "Confidential" or "Proprietary," 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 for a period of three (3) years from the date of disclosure. For confidential information provided to Contractor, the City shall conspicuously mark such information as confidential by written notice to Contractor within thirty (30) days of disclosure if such information is oral, visual or other non-tangible form.

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and the Contractor and shall be delivered to the City no later than the termination date of this Agreement. The City grants to Contractor a non-exclusive, irrevocable, perpetual, royalty-free license to use material, images, and reports created or produced by the Contractor for research and educational purposes.

13. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and certifies 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 certifies 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 certifications in Paragraphs A and B of this Article 13 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 certifications in Paragraphs A and B of this Article 13 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 certifications in Paragraphs A and B of this Article 13 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.

14. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by authorized officials of 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 5 herein, or to agree to the reduced funding.

15. 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 certifications, 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.

16. 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.

17. Equal Opportunity Compliance.

To the extent applicable, the Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, https://library.municode.com/nm/santa_fe/codes/code_of_ordinances 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.

18. 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 NMSA 1978, sec. 38-3-2. 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.

19. 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.

20. 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.

21. Other Insurance

Contractor represents and certifies that it maintains professional and general liability coverage as provided by the New Mexico Risk Management Division in accordance with the New Mexico Tort Claims Act, Sections 41-4-1 et. seq., NMSA 1978, as amended.

22. Records and Financial Audit.

The Contractor shall maintain records that indicate the 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. New Mexico Tort Claims Act

Any liability incurred by the City or the Contractor 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.

25. 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.

26. 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.

27. 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: Manuel Sanchez,
500 Market Street Ste 200
Santa Fe, NM 87501
mnsanchez@santafenm.gov

To the Contractor for contractual matters:

The University of New Mexico
Office of Sponsored Projects
1700 Lomas Blvd NE, Suite 2200
MSC01 1247 1 University of New Mexico
Albuquerque, NM 87131-0001
ospcontracts@unm.edu

28. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and certifies 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.

29. 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.

30. Non-Collusion.

In signing this Agreement, the City and Contractor certifies the City and Contractor have not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City's Chief Procurement Officer.

31. Default/Breach.

In case of default and/or breach by the Contractor, for any reason whatsoever, the City may procure the goods or services from another source pursuant to paragraph 5 (Termination). In no event shall Contractor be liable for indirect, special, incidental or consequential damages of any kind, including lost profits, arising out of or in connection with this Agreement, even if advised of the possibility thereof.

32. Equitable Remedies.

The Contractor acknowledges that its failure to comply with any provision of this Agreement may cause the City irrevocable harm and that a remedy at law for such a failure may be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction at its own expense, or any other equitable relief in order to enforce such compliance. The City's rights to obtain equitable relief pursuant to this Agreement may be in addition to, and not in lieu of, any other remedy that the City may have under applicable law.

33. Default and Force Majeure.

Neither Party shall be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of either Party; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above (hereinafter "Force Majeure Event"). The Party seeking to rely upon a Force Majeure Event(s) causes any failure to perform, shall promptly inform the other in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested and the Parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by the City as a result thereof. The rights and remedies of the Parties provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

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:

John Blair
John Blair (Sep 20, 2022 13:45 MDT)

JOHN BLAIR, CITY MANAGER

DATE: Sep 20, 2022

ATTEST:

Kristine Bustos Mihelcic

KRISTINE BUSTOS MIHELIC, CITY CLERK X/V

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jul 28, 2022 07:54 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:


Emily K. Oster
Emily K. Oster (Sep 16, 2022 16:29 MDT)

EMILY OSTER, FINANCE DIRECTOR

1001001.510310 AH
Org. Name/Org# AH

CONTRACTOR:

THE REGENTS OF THE UNIVERSITY
OF NEW MEXICO

 **CONTROLLER
ADMINISTRATION**
Digitally signed by Susan
Rhymer
Date: 2022.09.02 17:40:06
-06'00'

Susan Rhymer
Deputy Controller

DATE: _____
CRS# 01504447005
Registration # 233461