

Contract No. _____

PROFESSIONAL SERVICES AGREEMENT
between
the State of New Mexico
and
the University of New Mexico

Professional Services Agreement

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PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT, hereinafter referred to as "PSA," is made and entered into by and between the STATE OF NEW MEXICO,

_____ hereinafter referred to as "Agency," acting through its Cabinet Secretary, and the REGENTS OF THE UNIVERSITY OF NEW MEXICO, hereinafter referred to as "UNM."

Funding under this PSA is from:

state appropriations. [Identify authorizing/appropriating legislation]:

_____ other. [Identify source of

funding]:_____

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Scope Of Work**

UNM agrees to perform the professional services described in the Statement of Work attached hereto as Appendix "A" which is hereby incorporated by reference and made a part of this PSA.

2. **Compensation**

- A. Payment under this PSA shall be on a cost reimbursement basis, consistent with the budget set forth in Exhibit "B."

- B. Payments shall be made upon monthly receipt of a detailed statement of accounting for services performed and expenses incurred hereunder.

- C. The total amount of money payable under this PSA to UNM shall not exceed \$_____.

- D. Within fifteen (15) days after the date the Agency receives written notice from UNM that payment is requested for services or items of tangible personal property delivered on site and received, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Agency finds that the services or items of tangible personal property are not acceptable, it shall, within thirty (30) days after the date of receipt of written notice from UNM that payment is requested, provide to UNM a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with the details of how UNM may proceed to provide remedial action. Upon certification by the

Agency that the services or items of tangible personal property have been received and accepted, payment shall be tendered to UNM within thirty (30) days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to UNM at the rate of one percent (1%) per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to UNM within five (5) working days of receipt of funds from that funding agency.

- E. Allowable costs shall be those that would be allowable to UNM in a funding agreement with the federal government pursuant to OMB Circular A-021, with an indirect cost rate (for facilities and administrative costs) of _____%.

3. Term

This PSA shall not become effective until approved by both parties and the Department of Finance and Administration. The term of this PSA expires on _____, _____, unless terminated earlier pursuant to the provisions of this PSA.

4. Termination

- A. Either party has the option of terminating this PSA without cause by delivering written notice to the other party at least thirty (30) days in advance of the date of termination proposed in the notice.

- B. By terminating under this Section neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination of this PSA. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination, except that the Agency shall make payment for (a) costs resulting from obligations which were properly incurred by UNM before the effective date of the termination and are noncancellable, not reasonably avoidable, and would otherwise be allowable; (b) costs resulting from obligations imposed by law on UNM as a result of UNM's work under this PSA; and/or (c) costs reasonably necessary to avoid waste or damage to

property or work under this PSA, except to the extent the Agency specifies otherwise, in writing.

5. **Taxes**

The sale of services between UNM and state agencies is not subject to gross receipts tax or governmental gross receipts tax. Taxes paid by UNM as direct costs in performing the work under this PSA will be reimbursed by the Agency to the extent otherwise allowable under this PSA.

6. **Appropriations And Authorizations**

The terms of this PSA are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this PSA. If sufficient appropriations and authorization are not made by the Legislature, this PSA shall terminate pursuant to Section Four upon written notice being given by the Agency to UNM.

7. **Travel And Per Diem**

The allowability under this PSA of the costs of travel, per diem, or living expenses for UNM's staff shall be limited by the rates and amounts authorized by UNM's duly promulgated rules and regulations governing such expenses.

8. Status Of Contractor

UNM and its agents and employees are independent contractors performing professional services for the Agency. UNM and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of department vehicles, or any other benefits afforded to the employees of the Agency solely as a result of this PSA. Nothing in this PSA shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other relationship between the parties.

9. Insurance, Permits And Licenses

UNM shall procure all insurance, permits and licenses, pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work.

10. Assignment

Neither party shall assign or transfer any interest in this PSA or assign any claims for money or work, due or to become due under this PSA without prior written approval of the other party.

11. Confidentiality

In performance of this PSA, each party may find it necessary to disclose confidential information to the other party. The disclosing party shall reduce such information to writing and mark it "Confidential." Progress reports from UNM to Agency are hereby deemed to be confidential, except to the extent they are deliverables under this PSA. For a period of three years following the termination of the PSA, the receiving party shall protect the other party's confidential information from disclosure to third parties using at least the same practices and care as it would to protect its own confidential information.

12. Records and Audit

UNM shall maintain, for three years, detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Agency and State Auditor. The Agency shall have a right to audit billings both before and after payment; payment under this PSA shall not foreclose the right of the Agency to recover excessive and/or illegal payments.

13. Liability

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this PSA. Any liability incurred in connection with this PSA is subject to the immunities and limitations of the New

Mexico Tort Claims Act, Sections 41-4-1 et seq., NMSA 1978, as amended. In the event of either party's breach of this PSA, the other party's sole and exclusive remedy shall be the right to terminate this PSA and recover damages not in excess of the maximum amount to be paid by Agency under this PSA that are equitably related to the breach. In no event shall either party have liability for either incidental or consequential damages resulting from or arising in connection with this PSA.

14. Conflict Of Interest

UNM represents that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with the performance or services required under this PSA.

15. The Product of Services; Copyright

UNM shall own all copyrights created by its employees and students under this PSA ("UNM Copyrights"). Agency shall own all copyrights created by its employees under this PSA ("Agency Copyrights"). The parties shall own jointly any copyrights created jointly by one or more of each party's employees ("Joint Copyrights"). UNM hereby grants Agency a nonexclusive, worldwide, royalty-free license to use, duplicate, distribute, publish, and prepare derivative works of UNM Copyrights for state government purposes. Agency

hereby grants UNM a nonexclusive, worldwide, royalty-free license to use, duplicate, distribute, publish, and prepare derivative works of Copyrights for educational and research purposes.

UNM shall own any inventions created under this PSA.

16. Equal Opportunity Compliance

UNM agrees to abide by all applicable federal and state laws, rules, regulations, and executive orders. UNM agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, sex, sexual preference, age or handicap, be illegally excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to illegal discrimination under any program or activity performed under this PSA. If UNM is found not to be in compliance with these requirements during the term of this PSA, UNM agrees to take appropriate steps to correct these deficiencies.

17. Legal Compliance

The UNM shall comply with all federal, state and local laws, regulations, and ordinances applicable to the work called for herein.

18. Applicable Law

This PSA shall be governed by the laws of the State of New Mexico and applicable laws of the United States.

19. Severability

In the event that any portion of this PSA is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this PSA shall remain in full force and effect.

20. Notice

The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, or kickbacks in the procurement of this PSA. In addition, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation.

21. Subcontracting

UNM shall not subcontract any portion of the services to be performed under this PSA without prior written approval of the Agency, except for subcontracts identified in Exhibits A (Statement of Work) or B (Budget).

22. Amendment

This PSA shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

23. Merger

This PSA incorporates all the PSAs, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, PSAs, and understandings have been merged into this written PSA. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this PSA.

24. Counterparts

This PSA may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

25. Force Majeure

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this PSA it is agreed that on such party giving notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of

any inability so caused but for no longer period. Provided, however, that obligations to make payments accrued hereunder prior to, during, or after the occurrence of the cause relied upon shall not be suspended.

The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances (not included market or similar economic conditions), acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, arrests and restraints of the Government, either federal or state, inability of any party hereto to obtain necessary materials, supplies or permits due to existing or future rules, orders and laws of government authorities (both federal and state), interruptions by governments or court orders, present and future orders of any regulatory body having jurisdiction, civil or military disturbances, explosions, sabotage, or breakage or accident to machinery.

26. Mediation & Arbitration

Any controversy or claim arising out of or relating to this PSA, or the breach thereof, shall be first mediated in Albuquerque, New Mexico by a mediator mutually agreeable to the parties. If the parties cannot agree on a mediator

the parties shall each select one mediator. The two selected mediators will then select a third mediator who will mediate the dispute.

To the fullest extent permitted by law, any dispute or controversy arising out of or relating to this PSA or the breach thereof and not resolved by mediation shall be determined by binding arbitration. The duty to arbitrate shall survive and include the cancellation or termination of this PSA and shall include all disputes or questions and enforceability of this PSA. Such arbitration shall be conducted, upon request of any party, before a panel of three arbitrators designated by the American Arbitration Association, who shall be knowledgeable in the fields relevant to this PSA and the dispute and who shall make their award by majority vote in conformity with the rules of said Association and in accordance with the laws of the State of New Mexico as applied to the facts found by them. The award rendered by the arbitrators shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction. The expense of arbitration proceedings conducted hereunder shall be borne equally by the parties hereto, and all arbitration proceedings hereunder shall be conducted in Albuquerque, New Mexico.

27. Waiver of Breach

The waiver by either party of a breach of any provisions of this PSA shall not operate or be construed as a waiver by the party of any subsequent breaches.

28. Notices

Whenever in this PSA it shall be provided that notice or demand be given by either party to the other, such notice or demand shall be given in writing and forwarded to the address as follows:

UNM:

Agency:

29. Third Parties

Nothing in this PSA, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this PSA.

30. Property

Title to property acquired by UNM under this PSA shall vest in UNM unless otherwise provided in writing by agreement of the parties or as specified herein.

IN WITNESS WHEREOF, the parties hereto have executed this PSA on the date and year first above written.

(AGENCY):

By: _____ Date: _____
Title: _____

New Mexico Department of Finance & Administration

By: _____ Date: _____
Title: _____

University of New Mexico

By: _____ Date: _____
Title: _____

Exhibit A: Statement of Work
Exhibit B: Budget

December 1998
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