

AGREEMENT FOR PROFESSIONAL SERVICES for Operation of Visitor's Centers for the Village of Ruidoso

This agreement is made and entered into 13th day of June, 2023 by and between the Village of Ruidoso, a municipal corporation of the State of New Mexico, hereinafter called VILLAGE, and Ruidoso Valley Chamber of Commerce, hereinafter called (Contractor)

WITNESSETH:

WHEREAS, the VILLAGE is desirous of contracting for professional services for Operation of both the Ruidoso Visitor's Center and the Billy the Kid Visitor's Center for the Village of Ruidoso and;

WHEREAS, the VILLAGE desires to engage the Contractor to render services as described in this Agreement, and the Contractor is willing to perform such services in accordance with the terms of this agreement incorporated by reference herein as though set forth in its entirety, and in accordance with all applicable federal, state and local laws.

NOW, THEREFORE, in consideration of the conditions, premises and the covenant hereinafter contained the parties hereby agree as follows:

1. SCOPE OF WORK

- 1.1 Contractor shall manage the staff and daily operations of the Ruidoso Visitor's Center, the Billy the Kid Visitor's Center and the Wingfield Heritage House. The Ruidoso Visitor's Center and the Billy the Kid Visitor's Center will be open Monday-Saturday. The Wingfield Heritage House will be staffed seven days a week for four hours each day. If at any time the Village and the Contractor decide to increase the staffed hours at any of the locations, additional compensation may be negotiated based on actual staffed hours.
- 1.2 Contractor shall manage the financial operations of the Ruidoso Visitor's Center and the Billy the Kid Visitor's Center, including, but not limited to, accounts receivable, accounts payable, and payroll. The Contractor shall be responsible for only payroll, including any applicable payroll taxes for the Wingfield Heritage House. The Village will be responsible for any building maintenance for both the Billy the Kid Visitor Center and the Wingfield Heritage House.
- 1.1 Contractor shall provide initial meet-and-greet liaison interface for walk-up tourists, phone inquiries, internet requests, and other tourist related information for Ruidoso and the surrounding area.
- 1.2 Contractor shall distribute tourism literature to walk-in tourists and via mail and other forms of distribution.

- 1.3 Contractor shall capture and maintain statistics related to tourism, including, but not limited to, traffic to the visitors' centers, phone calls to the visitors' centers, and emails
- 1.4 Contractor shall provide quarterly updates to the Village Manager related to Contractor's performance under this Agreement.
- 1.5 Contractor may inform merchants in the Village of Ruidoso of available training at the Ruidoso Valley Chamber of Commerce and Contractor may provide training to merchants in the Village of Ruidoso related to public relations and tourism, should merchants request same.

2. FUNDING

Total funding under this Agreement shall not exceed \$185,500 for the Ruidoso Visitor's Center and the Billy the Kid Visitor's Center and \$42,200 for the Wingfield Heritage House, including New Mexico gross receipts tax, if applicable as set out in the Visitor Center Expenditure Narrative for July 1, 2023 through June 30, 2024. The Village may however add to said amount upon collection of lodger's taxes in excess of those amounts anticipated or in the event that the scope of work is changed. Partial payments will be made to the Contractor by the Village based upon actual itemized invoices submitted to the Village for work satisfactorily completed in conformance with the scheduled target completion dates and accepted by the Village. If the Agreement is renewed yearly, the total compensation may be negotiated based upon funds available and performance of the Contractor. Amended Budget is attached hereto.

3. TAXES

The Village shall pay any New Mexico gross receipts taxes levied on amounts payable under this agreement upon receipt of itemized billings from the Contractor; Contractor is responsible for making payment of such taxes to the Department of Taxation and Revenue unless Contractor is exempt from payment of taxes.

4. TRAVEL AND PER DIEM

No separate travel or per diem shall be paid to Contractor pursuant to this Agreement.

5. POSTAGE AND TOLL-FREE NUMBER

The Contractor will be responsible for sending out packets from visitors requesting such, and for receiving calls on the toll-free phone number which is on all marketing brochures. The Village will reimburse at actual cost the amounts spent for postage over and above \$2,500

6. TERM

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN

WRITING BY THE VILLAGE OF RUIDOSO COUNCIL. The term of this Agreement shall be for one (1) year, beginning July 1, 2023 and ending June 30, 2024 with an option to renew yearly thereafter for three (3) additional consecutive one year periods, not to exceed a total of four (4) years.

7. TERMINATION

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ninety (90) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.

8. INDEPENDENT CONTRACTOR

The Contractor is an independent Contractor performing professional services for the Village and are not employees of the Village of Ruidoso. The Contractor shall not accrue leave, retirement, insurance, bonding, use of Village vehicles, or any other benefits afforded to employees of the Village of Ruidoso as a result of this Agreement.

9. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the Village of Ruidoso,

10. SUBCONTRACTING

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval from the Village. If the Village approves subcontracting any part of this Agreement by approval of the governing body any subcontractor shall be subject to the same terms and conditions as the Contractor regarding all terms of this Agreement.

11. RECORDS OF AUDIT, INSPECTION, REPORTS AND ACCOUNTS

- A The Contractor agrees to maintain all books, documents, papers, accounting records, tear sheets and other evidence pertaining to costs incurred and to make such materials available for inspection at their offices at all reasonable times during the contract period and for three (3) years after the final payment under the Agreement by the Village.
- B. Contractor shall provide quarterly reports to the governing body (or its designated agent) with an itemized listing of all expenditures for those periods.

- C. Funds provided to Contractor by Village shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.
- D. An independent audit of Visitor Center Expenditures shall be conducted on an annual basis no later than ninety (90) days after June 30 in each calendar year.

12. AMENDMENT

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

13. SCOPE OF AGREEMENT

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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. Addendums may be made to this Agreement after the signing of this Agreement, should Addendums be agreed to and signed by both parties.

14. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Village of Ruidoso for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Village of Ruidoso, this Agreement shall terminate upon written notice being given by the Village to the Contractor. The Village's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

15. PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges, fees, royalties and give all notices necessary and incidental in the due and lawful prosecution of the work.

16. RELEASE

The Contractor, upon final payment of the amount due under this Agreement, releases the Village, and its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Village of Ruidoso to any obligations not assumed herein by the Village of Ruidoso, unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

17. CONFLICT OF INTEREST

The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor shall comply with any applicable

provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

18. PRODUCT OF SERVICES; COPYRIGHT

All materials developed or acquired by the Contractor under this Agreement shall become the property of the Village and shall be delivered to the Village no later than the termination date of this Agreement. Nothing produced in whole or in part by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

19. EQUAL OPPORTUNITY COMPLIANCE

The Contractor agrees to abide by all Federal and State laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

20. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico.

21. SEVERABILITY

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.

22. 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.

23. NOTICE

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. KICKBACK STATEMENT

The State of New Mexico's Procurement Code Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for this violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks. As required by Section 13-1-191, NMSA, 1978, it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978); it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978); it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2), NMSA, 1978).

25. INDEMNIFICATION

The Contractor agrees to hold harmless, indemnify and defend the Village and its "public employees" as defined in the New Mexico Tort Claims Act, Section 41-4-1 through 41-4-29 NMSA 1978. against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, fees of attorneys, costs or actions of any kind or nature whether from death, bodily injury or damage to property arising from or out of, connected with, resulting from or related to the Contractor's activities in connection herewith, including, but not limited to, any negligent or intentional acts or omissions of the Contractor's officers, employees, servants, agents, representatives, customers, invitees, patrons, contractors, subcontractors, successors, assigns or suppliers, as well as all of the persons doing business with or receiving services from the Contractor. The Contractor will be responsible for any and all attorney fees incurred by the Village in response to or defense of such claims. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or renewal period or any other termination of this Agreement.

26. INSURANCE

The Contractor agrees to carry comprehensive general liability insurance, including contractual liability coverage for its "hold Harmless" obligation contained herein in a minimum amount of \$1,350,000.00, or as may be changed from time to time by statute. A certificate of insurance (Appendix "B") showing the required coverage shall be provided prior to the Village's authorization to proceed and upon demand the Contractor shall furnish a copy of the policies to the Village. Contractor shall also carry Worker's Compensation and Employee's Liability Insurance meeting the applicable requirements of the State of New Mexico.

27. THIRD PARTY BENEFICIARIES

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions or any part of the Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to this Agreement to maintain any suit for wrongful death, bodily or personal injury, damage to property or any other matter whatsoever pursuant to the provisions of this Agreement.

28. 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 prior written approval by the Village Manager.

29. INCORPORATION BY REFERENCE AND PRECEDENCE

This Agreement is derived from (1) the Request for Proposal, written clarifications to the Request for Proposals and Procuring Agency response to questions; (2) the CONTRACTOR's Best and Final Offer, and (3) the CONTRACTOR's response to the Request for Proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) Amendments to the Agreement in reverse chronological order; (2) the Agreement, including the Scope of Work; (3) the CONTRACTOR's Best and Final Offer: the Request for Proposals, including attachments thereto and written responses to questions and written clarifications and (5) the CONTRACTOR's response to the Request for Proposals.

30. NON-COLLUSION

In signing this bid or proposal, the CONTRACTOR certifies that the accompanying bid or proposal is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under New Mexico or United States law.

31. NON-DISCRIMINATION

Vendors, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, color, religion, creed, political ideas, sex, national origin, age, marital status or physical or mental disability except where such is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. By signing and submitting a proposal, vendor agrees to comply with this paragraph.

32. CAMPAIGN DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective Contractor (engineer or CONTRACTOR) seeking to enter into a contract with any state agency or local public body must file a Campaign Contribution Disclosure Form with that state agency or local public body. This form must be filed by the prospective Contractor with their response to the request for proposals. The prospective Contractor must disclose whether they, a family member or a representative of the prospective Contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the Contractor submits a proposal.

33. 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.

34. DEBARMENT AND SUSPENSION

Pursuant to 45 C.F.R. Part 76, the CONTRACTOR certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above in this Article 25.1; (4) have not, within a three- year period preceding the effective date of this Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

The CONTRACTOR's certification in Article 25.A is a material representation of fact upon which the Agency relied when this Agreement was entered into by the parties. The CONTRACTOR shall provide immediate written notice to the Agency's Contract Administrator if, at any time during the term of this Agreement, the CONTRACTOR learns that its certification in Article 25.A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined that the CONTRACTOR's certification in Article 25.A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency, the Agency may terminate the Agreement.

As required by 45 C.F.R. Part 76, the CONTRACTOR shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the CONTRACTOR, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The CONTRACTOR shall make such disclosure available to the Agency when it requests subcontractor approval from the Agency pursuant to Article 8. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal department or agency, the Agency may refuse to approve the use of the subcontractor.

35. LOBBYING

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

36. SURVIVAL

The agreement paragraph titled Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

37. SUCCESSION

This agreement shall extend to and be binding upon the successors and assigns of the parties.

38. IMPRACTICALITY OF PERFORMANCE

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

39. NOTICES

All notices under this Agreement shall be sufficient if sent by United States First Class Mail, postage Prepaid
to:

CONTRACTOR:
Ruidoso Valley Chamber of Commerce
720 Sudderth Dr. Ruidoso, NM 88345

VILLAGE:
Village of Ruidoso
313 Cree Meadows Drive
Ruidoso, New Mexico 88345

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of this 30th day of June, 2023.

VILLAGE OF RUIDOSO, NEW MEXICO:

Lynn D. Crawford, Mayor

(SEAL)

ATTEST:

Jini S. Turri, MMC, Village Clerk

RUIDOSO VALLEY CHAMBER OF COMMERCE:

Deborah Douds, Executive Director