

## Professional Service Agreement

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**THIS AGREEMENT** is made and entered into by and between Central New Mexico Community College hereinafter referred to as "CNM" and \_\_\_\_\_ hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the CNM Purchasing Department.

**WITNESSETH:**

**WHEREAS**, the CNM Senior Director of Purchasing is advised and believes that the Contractor is one of such requisite character and qualifications and is willing to engage him/ her 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 paragraph one.

**NOW THEREFORE**, in consideration of the premises and of the mutual and reciprocal promises of the parties hereto, **IS HEREBY** covenanted and agreed by and between parties:

1. That the Contractor will render the following professional services to CNM: (Note: Attach separate scope of work if there is not enough room below.)

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2. That the contractor will devote the necessary hours each week to the performance of such duties that may be assigned to him/her by CNM.
3. That the contractor will serve CNM diligently and faithfully, and according to its ability and in all respects, will use his/her utmost endeavors to promote the interest of CNM.
4. That the Contractor will maintain records indicating the date and length of time such services are rendered. These records shall be subject to inspection by the designated agent of CNM.
5. That the services rendered by the Contractor shall be at the location of \_\_\_\_\_ or where CNM shall designate.

## Professional Service Agreement

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6. That for the services rendered satisfactory as per paragraphs one through five, CNM agrees to pay the Contractor compensation and expenses as follows: at the following rate of: \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per \_\_\_\_\_.  
Total compensation and expenses not to exceed \$ \_\_\_\_\_ excluding New Mexico Gross Receipts Tax (NMGRT). CNM is liable for NMGRT on services, applicable NMGRT \$ \_\_\_\_\_ total compensation including NMGRT not to exceed \$ \_\_\_\_\_ payable by CNM upon receipt of a signed invoice or Payee Claim for Reimbursement.
7. For any such expenses reimbursed by CNM, the independent contractor will be issued a 1099-MISC, provided the total amount of such reimbursements, combined with any other 1099-reportable payments issued to the independent contractor, exceed the published 1099 reporting threshold for the calendar year in which the payment was made.
8. Contractor must submit a detailed statement (invoice) accounting for all services performed and expenses incurred. If CNM finds that the services are not acceptable, within fifteen (15) days after the date of receipt of invoice from the Contractor that payment is requested, it shall provide the Contractor notification of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by CNM 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.
9. Invoices may be submitted electronically (emailed) to CNM\_invoices@cnm.edu for faster processing.
10. All invoices MUST BE received by CNM no later than fifteen (15) days after the termination of the Fiscal Year (June 30) in which the services were delivered.
11. Termination.-  
    A. Notice; CNM Opportunity to Cure.  
        1. CNM shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.  
        2. Contractor shall give CNM written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the CNM's material breaches of this Agreement upon which the termination is based

## Professional Service Agreement

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and (ii) state what the CNM must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if CNM does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, CNM does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by CNM; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred or (iii) the Agreement is terminated pursuant to Paragraph 13, of this Agreement.

B. Liability. Except as otherwise expressly allowed or provided under this Agreement, CNM's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CNM'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

C. Termination Management. Immediately upon receipt by either CNM 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 CNM; 2) comply with all directives issued by the CNM in the notice of termination as to the performance of work under this Agreement; and 3) take such action as CNM shall direct for the protection, preservation, retention or transfer of all property titled to CNM 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 CNM upon termination and shall be submitted to the agency as soon as practicable.

12. That the Contractor is an independent contractor performing professional services for CNM. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to the employees of CNM as a result of this contract.

## **Professional Service Agreement**

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13. That the terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the appropriate state agency or by CNM's Governing Board for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice by CNM. CNM's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
14. That the Contractor shall not assign any interest in this contract or transfer any interest in same or assign any claim for money due or to become due under this contract without the prior written consent of CNM.
15. That either party, independent or in concert, may terminate this contract by giving thirty (30) days written notice to the other party.
16. That this agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings, have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.
17. That this agreement shall not be altered, changed, or amended except by the instrument in writing executed by the parties hereto. The foregoing being clearly understood and agreed to, the parties hereto have set their hands and seals.
18. That this agreement shall be deemed to be a contract made in accordance with the laws of the State of New Mexico.
19. As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from its negligence. The liability of CNM will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978, as amended.

## Professional Service Agreement

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20. Any notice required to be given to 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 CNM:      **Central New Mexico Community College**  
                 **525 Buena Vista, SE**  
                 **Albuquerque, NM 87106-4096**  
                 **Attn: CNM Purchasing Department**

21. If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that they have 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.

22. 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. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1)      in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any CNM employee while such employee was or is employed by CNM and participating directly or indirectly in CNM's contracting process;

2)      this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

## **Professional Service Agreement**

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3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the CNM's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A).

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 22 are material representations of fact upon which CNM relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to CNM 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 22 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 22 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 Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 22.

## Professional Service Agreement

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### SECTION 1: CONTRACTOR INFORMATION

Contractor Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### SECTION 2: DEPARTMENT INFORMATION

Department Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

### SECTION 3: CONTRACT TERM

Date Effective: As of the date set forth below upon which it is executed by the CNM Purchasing Department.

Termination Effective: \_\_\_\_\_

### SECTION 4: PROFESSIONAL SERVICE CONTRACT APPROVAL

This agreement between CNM and \_\_\_\_\_  
has been approved by:

Signature of Department Head \_\_\_\_\_ Print Name \_\_\_\_\_

Title: \_\_\_\_\_

### SECTION 5: PROFESSIONAL SERVICE CONTRACT SIGNATURES

Signature of Contractor \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of CNM Purchasing Department \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

## Professional Service Agreement

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The terms & conditions provided for in this contract shall become effective and binding upon the signature of the CNM Purchasing Department.