

Agreement for Professional Services and Consulting Agreement for a City Internal Auditor

This agreement (“Agreement”) is made and entered into effective [____], 2025 by and between the City of Roswell, New Mexico, a New Mexico municipality and political subdivision of the State of New Mexico (the “City”) and True Business Solutions, LLC (“Consultant”), an New Mexico Corporation ;

Recitals

Wherefore, the Mayor and City Council (the “Governing Body”) concur that an internal Auditor is essential to the financial wellbeing and integrity of the City; and

Wherefor, Sec. 2-91 of the Roswell Code provides that there shall be an Internal Auditor housed through the office of the Treasurer; and

Wherefore, this Auditor shall report to the governing body and the Mayor through the Treasurer; and

Wherefore, the Mayor has recommended the Consultant and the Governing Body has approved the Consultant to serve as the City’s Internal Auditor;

NOW THEREFORE IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work

The Consultant shall perform the services described in Section 1 of this Agreement (this section) and perform this nonattest engagement in accordance with the standards of the [American Institute of Certified Public Accountants (AICPA)]

This Consulting Agreement is made between the City of Roswell, New Mexico (City), with a principal place of business at 425 North Richardson Street, Roswell, NM 88201 and True Business Solutions, LLC (Consultant), with a principal place of business at P.O. Box 1066, Roswell, NM 88202-1066.

Services to be Performed

Consultant agrees to perform the following nonattest services during the period:

- Perform an initial risk assessment to identify and prioritize high-risk areas
- Develop a flexible internal audit plan that aligns with the City’s strategic objectives and emerging risks
- Develop internal audit methodologies addressing the areas of risk identified in the audit plan and perform appropriate testing as designed.
- Communicate with City Leadership, including the City Manager, the Mayor, the Finance and Audit Committee any identified deficiencies and weaknesses and make recommendations for improvements on a regular basis

- Deliver standardized internal audit reports for City Leadership including executive summaries, detailed findings, and actionable recommendations
- Conduct follow-up procedures to verify implementation of audit recommendations
- Perform regular monitoring procedures utilizing various testing procedures and techniques

Engagement Limitations and Responsibilities

This engagement and scope therein are considered as nonattest services. The City agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the adequacy and results of the services; and accept responsibility for the results of the services. Generally this will be through the City Treasurer, but in the absence of a Treasurer, it will be done through the City Manager.

We will perform this engagement in accordance with the Statement on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (AICPA) and comply with the AICPA's Code of Professional Conduct, including the ethical principles of integrity, objectivity, professional competence, and due care.

Our engagement cannot be relied upon to identify or disclose any financial statement misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity of noncompliance with laws and regulations. We have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement. You agree that we shall not be responsible for any misstatements in the entity's financial statements that may not be identified as a result of misrepresentations made to us by you.

Special conditions between Consultant and City:

1. **IRREGULARITIES AND ILLEGAL ACTS:** In consultation with the City Attorney, Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware of to the City Manager, the Mayor and the Finance Committee, and the NM State Auditor's Office.
2. **REPORTING TO THE CITY:** The Consultant shall review any and all findings and corrective action plans with the City's management. In consultation with the City Attorney, if the Consultant reasonably believes the City's management intends to act or refuses to act in a manner that is a violation of a legal or fiduciary obligation to the City, or a violation of law that reasonably might be imputed to the City, the Consultant shall make their written report directly to the Governing Body.
3. **ADDITIONAL SERVICES:** Should the Governing Body decide to request testing of additional systems, the Consultant will perform the assessment at an agreed upon rate and time schedule.

3. Compensation

The City shall pay to the Consultant in full payment for services satisfactorily performed on a monthly basis as described below, not to exceed \$58,500.00, annually, plus applicable taxes. This amount is a maximum and not a guarantee that the work assigned to be performed by Consultant under this Agreement shall equal the amount stated herein. The parties do not intend for the Consultant to continue to provide services without compensation when the total compensation amount is reached. Consultant is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Consultant 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.

Expenses

Consultant will be responsible for all normal business expenses incurred while performing services under this Agreement, excepting travel, whereupon it will be authorized and approved in advance by City's authorized responsible party. Travel expenses are to be reimbursed at actual expense.

Taxes

City will not withhold FICA (Social Security and Medicare taxes) from Consultant's payments or make FICA payments on Consultant's behalf, make state or federal unemployment compensation contributions on Consultant's behalf, or withhold state or federal income tax from Consultant's payments. Consultant will pay all applicable income taxes incurred while performing services under this agreement and any applicable self-employment (Social Security and Medicare) taxes.

City is responsible for all State of New Mexico Gross Receipts Taxes applicable to the payments and location the work was performed.

Payments

In consideration for the services to be performed by Consultant, City agrees to pay Consultant a consulting fee not to exceed USD \$58,500.00 plus applicable sales taxes for the period as described in Section 1. Billing is as below:

- Twelve (12) Monthly payments based on services performed plus applicable sales taxes and reimbursable expenses due by the tenth (10) of the following month, or the following Monday if the 10th falls on a weekend. A detailed billing statement will be sent by Consultant via email by the last day of the billing month to applicable employee(s) at the City for prompt approval and payment.

Funds can be sent via check to Consultant (TBS, LLCs) address above or through electronic means acceptable to City. Consultant will submit invoices to City as described above, with each invoice covering appropriate periods. The invoices will include an invoice number, the dates covered by the invoice, and a summary of the work performed. City will promptly pay Consultant's fee within one (1) week after receiving the invoice.

Business Permits, Certificates, and Licenses

Consultant has complied with all federal, state, and local laws requiring business permits, certificates, and licenses to conduct the services to be performed under this Agreement.

Insurance

City will not provide insurance coverage of any kind for Consultant.

4. Term

This Agreement will become effective on July 1, 2025 or as soon as practicable and continue through June 30, 2026. This Agreement may thereafter be renewed for up to three additional periods of one (1) year each upon mutual written agreement of the Parties. Each renewal period shall be governed by the same terms and conditions hereof, except as may be otherwise agreed in writing by the Parties.

This Agreement may be terminated immediately by either of the parties upon written notice delivered to the other party by giving 30 days written notice in advance. Termination under this Section shall not terminate, prejudice or otherwise effect any right or obligation accruing hereunder prior to the termination

City will promptly pay Consultant for services performed before the effective date of termination. City will not owe Consultant compensation for any services performed following such date.

6. Status of Consultant

The Consultant and its agents and employees are independent Consultants performing professional services for the City and are not employees of the City. The Consultant and its employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the City as a result of this Agreement.

Consultant is an independent Consultant, not City's employee. Consultant and City agree to the following rights and obligations consistent with an independent Consultant relationship:

- Consultant has the right to perform services for others during the term of this Agreement.
- Consultant has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.
- Consultant has the right to perform the services required by this Agreement at any place, location, or time.
- Consultant will furnish all equipment and materials used to provide the services required by this Agreement.
- City will not require Consultant to devote full time to performing the services required by this Agreement.

7. Assignment

The Consultant shall not assign, delegate, subcontract any rights or obligations, or transfer any interest in this Agreement or assign any claims for money due or to become due under this agreement without City's prior written approval.

9. Records

The Consultant shall maintain detailed records that indicate the nature of services rendered during the term of this Agreement. The Consultant shall retain the records for a period of three (3) years from the date of final payment under this agreement, unless otherwise required by applicable law or regulation.

10. Release

The Consultant, upon receiving final payment of the amounts due under the Agreement, releases the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. This paragraph also releases the Consultant from any liabilities, claims or obligations whatsoever arising from or under this Agreement.

11. Confidentiality

All information provided to or developed by the Consultant from any source whatsoever in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Consultant without the prior written approval of the City, unless otherwise required by applicable law or regulation.

Each party will treat in confidence any information marked as confidential and proprietary to the extent allowed by law or regulation.

12. Product of Services; Copyright and Report Use

Nothing developed or produced, in whole or in part, by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant. The City and the Consultant may post the report on their respective websites.

Material (language or visuals) newly created by the Consultant while performing work for this Agreement and for purposes of the City's use are the property of the City. All other material (language or visuals), whether created by the Consultant or sourced elsewhere, and shown to the City for any purpose, remain the property of their original creators.

13. Conflict of Interest

The Consultant warrants that it 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 Consultant certifies that the requirements of the Governmental Conduct

Act, NMSA 1978, Section 10-16-1, et seq., regarding contracting with a public officer, City employee or former City employee have been followed.

15. Amendment

This Agreement shall not be altered, changed, or amended without subsequent written agreement of both parties.

16. Merger

This Agreement incorporates all of the contracts, covenants, and understandings between the parties hereto concerning the subject matter hereof. 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. Applicable Law

The laws of the State of New Mexico shall govern this Agreement. By execution of this Agreement, both parties acknowledge and agree to the jurisdiction of the courts of the State of New Mexico, county of Chaves over any and all lawsuits arising under or out of any term of this Agreement.

18. City Books and Records

The City is responsible for maintaining control of all books and records at all times and the Consultant shall not remove any original books and records from the City's possession for any reason.

19. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City's governing body for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City's governing body, this Agreement shall terminate upon written notice being given by the City to the Consultant. This section of the Agreement does not supersede the City's requirement to have an annual audit pursuant to NMSA 1978, Section 12-6-3(A).

20. Penalties for Violation of Law

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

21. Equal Opportunity Compliance

The Consultant agrees to abide by all applicable 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, regulations and orders, the Consultant assures

that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender 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 the Consultant is found not to be in compliance with these requirements during the life of this Agreement, the Consultant agrees to take appropriate steps to correct these deficiencies.

23. Designated On-Site Staff

The Consultant's may or may not perform infrequent on-site visits to accomplish work; the individual auditor responsible for supervision of work and completion of the nonattest engagement is Judy Scharmer, NM CPA License #3690. The Consultant shall notify the City or in writing of any changes in staff assigned to perform the engagement.

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.

25. Signatures

City: The City of Roswell, New Mexico

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Consultant: True Business Solutions, LLC

Judy Scharmer

Signature: _____

Printed Name: Judy Scharmer, CPA

Title: Managing Partner

Date: June 26, 2025