



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 28<sup>th</sup> day of July, 2016 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Home Kare Inc. of Doña Ana, 2293 Divot Ave Suite 4, Las Cruces, NM 88001, hereinafter called "CONTRACTOR".

### 1. PROJECT DESCRIPTION

In-home Respite Services

### 2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

### 3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

### 4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement at the rate of \$14.50 per hour, plus New Mexico Gross Receipts Tax at 8.3125% (\$1.21), for a total of \$15.71 per hour, not to exceed \$62,089.76 per contract term. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

The CITY agrees to compensate the CONTRACTOR for a minimum of three (3) hours at the above rate for services that are staffed by the CONTRACTOR at the direction of the CITY at the designated CLIENT location, at the designated date and time, and no one responds to the door or to repeated phone calls by the CONTRACTOR for a period of thirty (30) minutes following the designated start time.

The CITY agrees to compensate the CONTRACTOR's representatives who provide In-home Respite Services at time-and-a-half for services provided for the following days:

New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

The CITY will provide Form 1099 for amounts paid to CONTRACTOR for services during the term of this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of CONTRACTOR's business.

#### 5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY, and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

#### 6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2016 for a term of one year through June 30, 2017 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

#### 7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

#### 8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

#### 9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

## 10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

## 11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days' written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

## 12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

## 13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole

property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

#### 14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

CONTRACTOR will be responsible for ensuring that the caregivers who provide In-home Respite Services have passed and maintained the required TB testing, criminal background screenings, and participated in a continuing education training program of not less than ten (10) hours per contract year as mandated by the State and program regulations. The CONTRACTOR will only utilize individuals for In-home Respite Services under this Agreement. There is no charge to the CITY for any type of screenings.

All caregivers will be trained in identifying and reporting abuse, neglect, exploitation, and serious incidents. The CONTRACTOR will report any serious incidents to the CITY

within two (2) business days (within forty-eight [48] hours) of the time of the reported incident.

All caregivers will be certified in Cardio-Pulmonary Resuscitation if mandated by the CONTRACTOR, and trained in seeking emergency medical services for medical emergencies or Basic First Aid.

The CONTRACTOR shall maintain a designated On-call Supervisor to provide supervision of In-home Respite Services and to respond to "after-hours" CLIENT incidents, complaints, or other concerns that arise off regular office hours; and to attend to designated services in the event that the CONTRACTOR's representative does not show up to work for any reason and / or has to leave for another CLIENT obligation.

#### 15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

#### 16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

#### 17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim
- b. Worker's Compensation Per New Mexico Statute (3 or more employees)
  - \$1,000,000 - Bodily Injury: By Accident - Each Accident
  - \$1,000,000 - By Disease: Policy Limit
  - \$1,000,000 - By Disease: Each EmployeeThis coverage required for non-construction contractor with three (3) or more employees.

The City must be named as additional insured - this coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of endorsement for this coverage must be provided as a condition of this Agreement.

Waiver of Subrogation will apply and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

CONTRACTOR will be responsible for ensuring that its licensing requirements, including a Certificate of Liability Insurance and the City of Las Cruces Business Registration, are in compliance with Federal and State regulations, and will have these documents available for the CITY or North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging (AAA) to review as needed.

#### 18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

#### 19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

#### 20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

#### 21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces  
PO Box 20000  
Las Cruces, NM 88004  
ATTENTION: Lora G. Palacios

With Copies to: City Attorney  
Purchasing Manager

TO CONTRACTOR: Home Kare Inc. of Doña Ana  
2293 Divot Ave. Suite 4  
Las Cruces, NM 88001  
ATTENTION: Irma Felix

23. SCOPE OF AGREEMENT

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.

HOME KARE INC. OF DOÑA ANA

CITY OF LAS CRUCES

BY: Martha A. Lozano-Cuaron  
Martha A. Lozano-Cuaron  
Executive Director/CFO

BY: Deb Smith  
Deb Smith  
Purchasing Manager

9/25/16  
Date

7/28/16  
Date

APPROVED AS TO FORM

Robt Cook  
ACTING City Attorney

# EXHIBIT A

# SERVICES

## **Scope of Work:**

To provide In-home Respite Services Monday through Sunday, and on emergency basis to CLIENT and their Caregiver. The In-home Respite Services provided will allow the primary Caregiver of CLIENT, to receive a rest from care-giving duties. The In-home Respite Services for Caregivers including Grandparents Raising Grandchildren will include Respite/Companionship services only. The scope of work for In-home Respite Services does not include any medical care or personal care. The CONTRACTOR also agrees to provide weekly reports of services rendered to the CITY to aid in the reimbursement process as outlined in section 12. Records and Audits, of this Agreement.

## **Start-up Date:**

Within thirty (30) days of contract execution, the selected contract is to be fully-operational.

## **Service Area:**

The standard service area is within the boundaries of the City Limits of the City of Las Cruces.

## **Demand for Service:**

The demand for In-home Respite Services will be for an estimated twenty (20) CLIENTS for the contract year. Hours will be coordinated by Long Term Care Services staff (CITY), and distributed to CLIENTS based on their need according to their Non-Metro Area Agency on Aging In-home Rating Scale.

The demand for In-home Respite Services for Grandparents Raising Grandchildren will be for an estimated ten (10) Grandparents for the contract year. Hours will be coordinated by the Long Term Care Services staff (CITY), and distributed to CLIENTS based on availability and need.

## **Service Hours:**

The In-home Respite Services hours to be provided by the CONTRACTOR will be scheduled for a minimum of three (3) hours in duration unless agreed in advance by the

CITY and the CONTRACTOR; the hours can and may be for a period of up to twenty-four (24) hours in duration; and the CLIENT referral will specifically include the CLIENT name(s), date of service, start time, and duration requested in writing by the CITY.

The CITY shall notify the CONTRACTOR within a twenty-four (24) hour period whenever possible if a Caregiver's requests for services is cancelled or rescheduled. The CONTRACTOR shall notify the CITY within a twenty-four (24) hour period if they do not have a Provider to meet the request for service.

The CITY will communicate through a meeting with, or telephone call to, the CONTRACTOR the following Monday of each week beginning July 1, 2016, to discuss any changes; specifically, if any requests for service were cancelled, rescheduled, if the delivery of service went beyond or below the amount of time previously scheduled, and if there were any problems with the service.

### **Arrangement of Service:**

Only the CITY through its designated staff will arrange for In-home Respite Services with the CONTRACTOR. The CLIENTS of the CITY will not request, schedule, cancel, or reschedule services directly with the CONTRACTOR. The On-Call Supervisor of the CONTRACTOR has the authority to resolve scheduling issues, such as cancellations or rescheduling of services that arise on the weekends, and report the changes to the CITY the following Monday. Any arrangements for services made by the CONTRACTOR directly with the CLIENT, or by the CLIENT directly with the CONTRACTOR and its representatives and not specifically authorized in a written request by the CITY are subject to non-payment by the CITY.

Requests for In-home Respite Services by the CITY will be made during regular office hours of the CONTRACTOR, between the hours of 8:00am and 5:00pm, Monday through Friday, excepting established holidays that fall on a weekday. All requests will be made by telephone call from the CITY representative to the CONTRACTOR and its representatives, followed by a facsimile transmittal by the CITY to the CONTRACTOR confirming the request.

Requests for services by the CITY will be made in the following manner:

- The CITY will prepare a monthly schedule of In-home Respite Services and deliver it to the CONTRACTOR five (5) business days prior to the start of the month. This schedule will include the CLIENT name(s), CLIENT location, date of service, start time, and requested duration of the scheduled In-home Respite Service.
- Additions to scheduled services can be made by the CITY during regular office hours of the CONTRACTOR at least two full business days (48 hours) in advance of the start time for the requested respite period. The CONTRACTOR will not arrange for any additions to the monthly schedule directly with the

CLIENT. The CLIENT will not make any additions to the monthly schedule directly with the CONTRACTOR. All requests for additions will be made by the CITY through telephone call, documented in writing and placed in the CLIENT file.

- Cancellation of scheduled services should be made by the CITY at least one full business day (24 hours) in advance of the start time for the requested respite period. All requests for cancellations will be made by telephone call and in writing through facsimile from the CITY. The CONTRACTOR will notify the CITY within one business day (24 hours) of any after-hours cancellations that are made by the CLIENT.
- Rescheduling of In-home Respite Services by the CITY is to be handled as a cancellation of scheduled services, followed by an addition to scheduled services, and will not be charged to the CITY. The CONTRACTOR will not reschedule directly with the CLIENT.
- The CONTRACTOR will maintain an accurate and complete monthly calendar that reflects the initial request by the CITY with all additions and cancellations of services. The CONTRACTOR will retain all requests by the CITY with the monthly calendar, and make them available for inspection by the CITY during regular business hours.
- The CONTRACTOR agrees to meet with the CITY from time to time as needed to maintain and improve the quality of the In-home Respite Services. This effort is to facilitate scheduling of services and resolution of any complaints or concerns with the services provided.

The CONTRACTOR will provide In-home Respite Services as requested by the CITY using the described process. The CONTRACTOR's failure to provide In-home Respite Services when requested by the CITY may result in loss of referrals for In-home Respite Services, or other actions as deemed appropriate.