

CITY OF SAN ANGELO, TEXAS
STANDARD PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS
Effective April 16, 2018

1. SCOPE OF SERVICE:

A. Provider agrees to provide the basic Services described under the projected "Scope of Work" in City's Request for Qualifications to which Provider has responded, and any Task Orders issued pursuant to the Contract and other Contract Documents (collectively the "Contract") with the professional qualifications as described by Provider's response to the RFQ. Services will be detailed in duly executed written Task Orders for each Specific Project in a format approved by the City and if for compensation of \$50,000 or more, are subject to approval of City Council pursuant to City policy or as required by law. Each Task Order will indicate the specific services to be performed and deliverables to be provided and be executed by authorized representatives of each party.

B. Provider agrees that the Contract is not a commitment by City to Provider to issue any Task Order not issued on or before the Effective Date of the Contract or to provide any scope of service for acceptance by Provider under the Contract.

C. City and Provider shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of the Contract. Provider shall not be obligated to perform any prospective Task Order unless and until City and Provider agree as to the particulars of the Specific Project, including the scope of Provider's services, time for performance, Provider's compensation, and all other appropriate matters.

D. Provider represents and warrants to City that throughout the term of the contract and the performance of any work pursuant to Task Order issued under this contract that: (i) it possesses all qualifications, licenses and expertise required for the performance of Services; (ii) it is not delinquent in the payment of any sums due City, including but not limited to payment of permit fees or occupational licenses, nor in the performance of any obligations to City; (iii) all personnel assigned to perform Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) Services will be performed in the manner described in Contract Documents; (v) services provided under the Contract shall be performed with the professional skill and care ordinarily provided by members of the same profession practicing under the same or similar circumstances and professional license; and (vi) services provided under the Contract shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the same profession.

2. COMPENSATION:

A. The amount of compensation payable by City to Provider shall be based on the price, rates, time for performance, and schedules described by **Task Order** incorporated into the Contract for all purposes.

B. Unless otherwise specifically provided by the Task Order, payment shall be made within thirty (30) days after receipt of Provider's invoice, which shall be accompanied by sufficient supporting

documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed.

3. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:** The Contract is expressly made subject to all applicable federal, state, county and City laws, statutes, ordinances, rules, codes and regulations as set forth now or hereinafter adopted, enacted or amended (collectively referred to as "Regulations"), including but not limited to: Regulations specifically applicable to Services provided and Work performed under this Contract. All of the Regulations are hereby made a part of this Contract and incorporated herein by reference as if fully set out herein. Provider agrees that all Services provided and Work to be performed under this Contract shall be performed in strict compliance with such Regulations as they may be amended from time to time which may apply to Services provided and Work performed.

4. **OWNERSHIP OF DOCUMENTS:** Provider understands and agrees that any information, document, report or any other material whatsoever which is given by City to Provider or which is otherwise obtained or prepared by Provider pursuant to or under the terms of the Contract is, and shall at all times remain, the property of City. Provider agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion. If City modifies and/or uses the documents for any reason other than their intended use without Provider's authorization, Provider shall be released from any liability associated with that use.

5. **AUDIT AND INSPECTION RIGHTS:**

A. City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by City to Provider under the Contract, audit, or cause to be audited, those books and records of Provider which are related to Provider's performance under this Contract. Provider agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Contract.

B. City may, at reasonable times during the term hereof, inspect Provider's Work and perform such tests, as City deems reasonably necessary, to determine whether the Services required to be provided by Provider under the Contract conform to the terms of the Contract Documents and applicable codes and regulations. Provider shall make available to City all reasonable access and assistance to facilitate the performance of such inspections and/or tests.

6. **AWARD OF CONTRACT:** Provider represents and warrants to City that it has not employed or retained any person or company employed by City to solicit or secure the Contract and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage of cost, brokerage fee, or gift of any kind contingent upon or in connection with the award of the Contract.

7. **PUBLIC RECORDS:** Provider understands that the public shall have access at all reasonable times, subject to applicable exceptions and restrictions on copying, to all documents and information pertaining to City contracts, and agrees to allow access by City and the public to all documents subject to disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section shall be

considered a material breach of the Contract and may result in the immediate termination of the Contract by City.

8. DEFAULT:

A. If Provider fails to comply with any term or condition of the Contract, or fails to perform any of its obligations hereunder, then Provider shall be in default. Upon the occurrence of a default, City, in addition to all remedies available to it by law, may immediately, upon written notice to Provider, terminate the Contract whereupon all unpaid contract funds shall be available to City to complete the work and/or remedy any defective performance by Provider. Should Provider default, any advances for work to be performed or related costs which have been paid by City to Provider shall be immediately returned to City. Should the costs to complete the work and/or remedy any defective performance by Provider exceed the remaining Contract balance, Provider shall be liable to City for all costs and expenses to complete the work and/or remedy any defective performance, to include any cost associated with re-procurement, and for any consequential and incidental damages suffered by City. Provider understands and agrees that termination of the Contract under this section shall not release Provider from any obligation accruing prior to the effective date of termination.

B. Before City shall be liable to Provider or any of its successors or assigns for any alleged breach of the Contract, notice must first be given City no later than ninety-one (91) days of the date Provider alleges the breach occurred. Such notice shall be given in accordance with Contract provisions for service of notice and shall state the date, time, and circumstances of the alleged breach.

9. TERMINATION RIGHTS OF CITY:

A. City shall have the right to terminate the Contract, in its sole discretion, at any time, for any reason, by giving written notice to Provider at least five (5) business days prior to the effective date of such termination. In such event, City shall pay to Provider compensation for Work rendered and expenses incurred prior to the effective date of termination. In no event shall City be liable to Provider for any additional compensation, other than that provided in the Contract, or for any consequential or incidental damages.

B. City shall have the right to terminate the Contract, without notice or liability to Provider, upon the occurrence of an event of default under the Contract. In such event, City shall not be obligated to pay any amounts to Provider and Provider shall reimburse to City all amounts received while Provider was in default under the Contract.

10. RESOLUTION OF CONTRACT DISPUTES:

A. Provider understands and agrees that all disputes between Provider and City concerning or relating to the work shall be held for resolution until the Project has been substantially completed. Provider shall make a written request for resolution of the dispute (the "Request") to City's designated official (the City Manager or his designee) for determination of the matter in dispute. The Request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that Provider wants the official to consider in reaching a determination. The official shall issue a written notice of decision upon Provider's Request within the thirty (30) days of receipt of Provider's Request. If the official cannot issue a decision within

thirty (30) days of the receipt of Provider's Request, the official shall notify Provider the date upon which a decision shall be issued. Submission of a Provider's Request for determination of the dispute is a condition precedent to Provider's ability to engage in litigation against City. If a decision is not issued by the date indicated by the official or within ninety (90) days after the submission of Provider's written Request for determination, whichever occurs first, Provider will be deemed to have met the condition precedent required by this provision. Should the dispute be resolved through the submission of Provider's Request, the resolution of the dispute will be documented, if necessary, through a change to the Contract in accordance with the provisions contained in the Contract. Should the dispute fail to reach resolution through the submission by Provider's Request, the dispute may be submitted to mediation at the sole discretion of City. City agrees that it shall make an election within no later than sixty (60) days after the issuance of a determination by the official in response to a Provider's Request, final completion of the work, abandonment or termination of the Project, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Provider understands and agrees that it shall continue to perform Work under the Contract unless further performance has been excused by termination of Provider or stopping Work is specifically allowed under the laws of the State of Texas. Provider understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects not to proceed to mediation, then the dispute may be submitted to litigation in keeping with the terms of the Contract and the laws of the State of Texas.

B. Provider understands and agrees that any and all other disputes arising between Provider and City not related to changes, change orders or extra work, may be submitted to mediation at the sole discretion of City. City agrees that it shall make such an election within no later than sixty (60) days from the date of final completion of work, abandonment or termination, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Provider understands and agrees that it shall continue to perform Work under the Contract unless further performance has been excused by termination of Provider or abandonment is specifically allowed under the laws of the State of Texas. Provider understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of the Contract and the laws of the State of Texas.

11. INSURANCE:

A. Provider shall, at all times during the term of the Contract, maintain such insurance coverage as may be required by City of the types and in the amounts specified in the Special Insurance Rider and with insurers licensed to do business in Texas. All insurance required under the Contract shall be drawn in the name of Provider, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional

insureds, except on coverage for Workers' Compensation and Errors and Omissions/Professional Liability. Every policy required above shall be primary insurance. Any insurance or self-insurance benefits carried by City, its officers, or its employees, shall be excess and not contributory to that provided by Provider. All such insurance, including renewals, shall be subject to the approval of City for adequacy of protection and evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of Services under the Contract without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with City's Risk Manager at City Hall, 72 W. College Avenue, San Angelo, Texas 76903 prior to the performance of Services hereunder, provided, however, that Provider shall at any time upon request file duplicate copies of the policies of such insurance with City.

B. The procurement of insurance coverage by Provider shall not be construed to be a limitation upon Provider's liability or as a full performance on its part of Provider's indemnification requirements under the Contract. Provider's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to performance of the work under the contract and its activities conducted at or upon the premises. Failure of Provider to maintain adequate coverage or coverage in excess of that required under the Contract shall not relieve Provider of any contractual responsibility or obligation.

C. Provider shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

D. Provider shall cause each subcontractor and sub-subcontractor of Provider to purchase and maintain insurance of the types and in the amounts specified in the Special Insurance Rider hereto. Provider shall require subcontractors and sub-subcontractors to furnish copies of certificates of insurance to Provider's Risk Manager evidencing coverage for each subprovider and sub-subprovider

E. If, in the judgment of City, prevailing conditions reasonably warrant the provision by Provider of additional liability insurance coverage or coverage which is different in kind, City reserves the right to require the provision by Provider of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should Provider fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following City's written notice, the Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

12. INDEMNIFICATION. CITY shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from the services of PROVIDER pursuant to the contract to which these Standard Professional Services Contract

Terms and Conditions apply. PROVIDER hereby waives all claims against CITY, its officers, boards, commissions, agents, representatives and employees (collectively referred to in this section as "CITY") for damage to any property or injury to, or death of, any person arising at any time and from any cause other than the negligence or willful misconduct of CITY or breach of CITY's obligations hereunder. To the extent permitted by law, PROVIDER agrees to indemnify and save CITY harmless from damages (including court costs and reasonable attorneys' fees in proportion to the PROVIDER's liability) and actions of any kind by reason of injury to or death of any person or damage to or loss of property to the extent caused by or that results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by PROVIDER or PROVIDER's agent, consultant under contract, or another entity over which the PROVIDER exercises control. PROVIDER's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by PROVIDER under the contract to which these Standard Professional Services Contract Terms and Conditions apply. This Section 12 INDEMNIFICATION provision shall survive the termination of the subject contract to which these Standard Professional Services Contract Terms and Conditions apply.

13. **INDEPENDENT CONTRACTOR:** Nothing contained in the Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Provider shall at all times remain an independent contractor with respect to Work to be performed under the Contract. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance on Provider's employees.

14. **NONDISCRIMINATION:** Provider represents and warrants to City that Provider does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Provider's performance under the Contract on account of race, color, sex, religion, age, handicap, marital status or national origin. Provider further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of the Contract.

15. **VERIFICATION OF EMPLOYMENT ELIGIBILITY:** Provider must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Provider, not City, must verify eligibility for employment as required by IRCA.

16. **AMENDMENTS:** City and Provider may amend the Contract at any time provided that such amendment makes specific reference to the Contract, and is executed in writing, signed by a duly authorized representative of contracting parties, and approved by City Council when required pursuant to law or City policy. Such amendments shall only address the

items or issues dealt with in the amendment and shall not invalidate any other portion or provision of the Contract, nor relieve or release City or Provider from their respective obligations under the Contract except as may be specifically set forth in the amendment.

17. **ASSIGNMENT:** No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such prior consent (except to the extent that this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

18. **SUCCESSORS AND ASSIGNS:** This Contract shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

19. **NOTICES:** Communications and details concerning the Contract shall be directed in writing to the authorized agent of the party as set forth on the face of the Contract. Designation of authorized agent or address for notice may be changed by written notice to the other party. Any notice required or permitted to be given to a party under the Contract shall be in writing and shall be deemed given (i) on the day it is delivered personally (with receipt); or (ii) the day after it is deposited with a nationally recognized courier service for next-day delivery; or (iii) three (3) days after it is deposited in the U.S. certified mail, postage prepaid, return receipt requested, addressed to the party's authorized agent.

20. **MISCELLANEOUS PROVISIONS:**

A. **Remedies:** In the event of default by Provider under the Contract Documents, City shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract. City's exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity that may be available to City against either Provider or its Surety.

B. **Attorneys' Fees:** If any action at law or in equity is necessary by either City or Provider to enforce or interpret the terms of the Contract Documents, the party prevailing on the majority of issues shall be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which the prevailing party is entitled.

C. **Conflicts:** The Contract, the documents required to be provided, and the Contract Documents, are governed by the laws of the State of Texas. Venue for any suit or claim or cause of action arising out of or related to Work covered by the Contract shall be in Tom Green County, Texas.

D. **Counterparts:** This Contract may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Contract. By affixing their signature to the Contract, each individual is representing that he or she has the authority to sign the Contract and to bind the party that they represent to the Contract.

E. Enforcement: This Contract shall be construed and enforced according to the laws of the State of Texas.

F. Headings: Titles and paragraphs are for convenient reference and are not a part of the Contract.

G. No Waiver: No waiver or breach of any provision of the Contract shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

H. Governing Laws: Should any provision, paragraph, sentence, word or phrase contained in the Contract be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of the Contract shall remain unmodified and in full force and effect or limitation of its use.

I. Applicable Law: This Contract and the Contract Documents are subject to all applicable federal and state laws, statutes, codes, rules and regulations and local ordinances, rules and regulations.

21. CONTINGENCY CLAUSE: Funding for the Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination for convenience due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

22. ENTIRE CONTRACT: The Contract, inclusive of the Contract Documents identified therein or adopted by written task order, change order or other document duly executed by the respective parties, constitute the sole and entire agreement between the parties. No modification or amendment of the Contract shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

23. REAFFIRMATION OF REPRESENTATIONS/WARRANTY OF AUTHORITY: By the execution of the Contract, Provider reaffirms all of the representations contained in Contract Documents. Each person executing the Contract on behalf of Provider by the execution thereof warrants that he or she has the authority of the governing body of Provider to lawfully bind Provider to the Contract. At the time of execution of the Contract, Provider shall execute and provide to City/Owner such disclosures as required by law and the verified certification in a form provided by City in compliance with Chapter 2270 of the Texas Government Code and Subchapter "F" of Chapter 2252 of the Texas Government Code.