



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“AGREEMENT”), dated May 8, 2018, is entered into by and between H2O Partners, Inc., 260 Addie Roy Road, Suite 150, Austin, TX 78746, a corporation formed under the laws of the State of Texas (hereinafter referred to as “CONSULTANT”) and the City of Aransas Pass hereinafter referred to as (“CLIENT”). Together CONSULTANT and CLIENT shall be referred to as “the Parties”.

WITNESSETH

WHEREAS, CLIENT issued a Request for Proposal (RFP) 2018-002 for Disaster Recovery Consulting Services (SERVICES);

WHEREAS, CONSULTANT submitted a successful response to the RFP;

WHEREAS, CLIENT intends for CONSULTANT to provide SERVICES; and

WHEREAS, CONSULTANT agrees to provide all technical and professional expertise, knowledge, management, and other resources required for providing SERVICES.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, it is hereby agreed as follows:

1. Responsibilities; Services and Duties

- A. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, documents, estimates, specifications, reports, studies and other material (all items collectively hereinafter called "PROJECT DOCUMENTS") and plan consulting services furnished by the CONSULTANT in strict accordance with the terms, covenants, and conditions of this AGREEMENT and all applicable Federal, State, and local laws, rules, and regulations.
- B. CLIENT approval of PROJECT DOCUMENTS, services, and incidental consulting services shall not in any way relieve the CONSULTANT of responsibility for the technical accuracy of the SERVICES performed.

- C. CLIENT's Contract Manager will be responsible for exercising general oversight of CONSULTANT's activities in completing SERVICES stated in the AGREEMENT. The Contract Manager will represent the CLIENT's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the CONSULTANT, and shall approve all invoices for payment, as appropriate. The CLIENT's Contract Manager shall give the CONSULTANT timely feedback on the acceptability of progress and task reports.

- D. CONSULTANT's Contract Manager for this engagement shall be: Eric Howard; Phone: 512.940.9300; Email: eric@h2opartnersusa.com.

CLIENT's Contract Manager for the engagement shall be: Sandra Garcia, Finance Director; Phone: 361.758.5301; Email: sgarcia@aransaspasstx.gov.

2. Scope of Services

- A. It is the intent of this AGREEMENT to establish the terms and conditions upon which the CONSULTANT agrees to perform SERVICES. Task Orders will be developed and signed by the Parties.

- B. The Parties shall monitor all cost, time, duties performed and expenses in concurrence with State and Federal regulations for Direct Administrative Costs (DAC) per FEMA Project worksheet.

3. Time of Performance

- A. CONSULTANT agrees to begin work on the day in which the contract is executed and provide SERVICES until completion of projects and closeout of all Project Worksheets (PW) by FEMA. CLIENT agrees to provide all available information pertinent to the project in a timely fashion and to promptly notify CONSULTANT of any developments that affect the scope or time of performance.

- B. The time of performance for the AGREEMENT may be modified upon written approval of the Parties.

4. Compensation

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- A. For and in consideration of SERVICES, CLIENT shall pay, and the CONSULTANT shall receive, compensation for expenses and personnel time at the agreed upon in Task Orders signed by the Parties.
- B. Compensation for CONSULTANT shall not exceed dollar amount noted in the Task Orders, which are agreed to by the Parties for SERVICES provided to CLIENT.
- C. Unless otherwise specified by CLIENT, CONSULTANT shall forward an electronic version of their invoice to CLIENT not more often than monthly, covering all hourly rates and expenses for the work of the preceding month. All remittance by the CLIENT for such compensation shall either be mailed or delivered to the CONSULTANT's office as identified in Section 12, "Notices".
- D. Invoices will include a description of work completed, time spent, FEMA Project Worksheet Reference Number, staff members that performed the work, and any reasonable and necessary expenses incurred by CONSULTANT and performed in compliance with all applicable federal, state and local laws, rules, regulations and ordinances. Unless and until the CONSULTANT is otherwise notified, invoices shall be submitted by e-mail to the CLIENT's office as identified in Section 12, "Notices".
- E. CLIENT agrees to pay CONSULTANT for the first invoice 60 days from review and approval of the invoice by CLIENT. For all future invoices CLIENT shall pay CONSULTANT for services rendered no later than 30 days from receipt of invoice.

5. Independent Contractor

The services performed hereunder by the CONSULTANT shall be subject to CLIENT'S inspection and approval, but the detailed manner and method of doing said services shall be under the control of the CONSULTANT and performed in compliance with all applicable federal, state and local laws, rules, regulations and ordinances. In the performance of SERVICES, CONSULTANT shall be deemed an independent contractor, and any of its employees performing SERVICES shall be deemed solely employees of CONSULTANT, and not employees of the CLIENT.

6. Laws and Ordinances

- A. CONSULTANT shall at all times observe and comply with all federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority, which in any manner affect this AGREEMENT.

- B. CONSULTANT agrees, moreover, not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, national origin, genetic information, or any other legally protected category.

CONSULTANT agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990. The CONSULTANT agrees that the indemnification provisions of Section 7, “Indemnification and Insurance” encompass any failure by the CONSULTANT to comply with this article.

7. Indemnification and Insurance

- A. CONSULTANT agrees to indemnify and hold harmless CLIENT from and against any losses, claims, liabilities, or damages occurring as a result of or arising out of this AGREEMENT on account of CONSULTANT’s negligence or willful misconduct (or the negligence or willful misconduct of any of their respective affiliates), to the extent not caused by the fault of CLIENT. CONSULTANT further agrees to indemnify and hold harmless CLIENT from and against any losses, claims, liabilities, or damages alleged by CONSULTANT’S employees, contractors, subcontractors and representatives relating to the work performed under this AGREEMENT.
- B. CONSULTANT warrants that it maintains 1) general liability insurance in an amount acceptable CLIENT and 2) workers’ compensation insurance on all of its employees in an amount acceptable to CLIENT. CLIENT shall be named as an additional insured on CONSULTANT’s general liability insurance up to \$1,000,000 in damages per incident.

8. Assignment

Neither this AGREEMENT, nor any right, privilege or cause of action arising hereunder, may be assigned by CONSULTANT in whole or in part for any purpose and whether in settlement of litigation or not, and any purported assignment shall be null, void and unenforceable without the prior written consent of the CLIENT. The CLIENT and the CONSULTANT each binds itself and its successors and assigns to the other party with respect to all covenants of this AGREEMENT.

9. Termination

- A. CLIENT may terminate this AGREEMENT, or any portion of it, by serving a notice of termination on the CONSULTANT, which shall be effective on the date of the receipt of the notice of termination. The notice shall state whether the termination is for convenience of CLIENT or for default of the CONSULTANT.

- B. If the termination is for default, the notice shall state the manner in which the CONSULTANT has failed to perform the requirements of the AGREEMENT and allow thirty (30) days for the CONSULTANT to cure such default, or provide evidence sufficient to prove to the CLIENT's reasonable satisfaction that such default does not, in fact, exist.
- C. If the termination is for the convenience of CLIENT, the CONSULTANT shall be paid its costs up to the time the notice of termination is received and in an amount that does not exceed the total dollar amount as agreed to in the applicable Task Order(s).

10. Acceptance of Incomplete or Non-Conforming Deliverables

- A. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the CLIENT prefers to accept it, the CLIENT may do so. If any such acceptance occurs prior to final payment, the CLIENT and CONSULTANT may agree upon the amount to be deducted to compensate the CLIENT for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the CLIENT by the CONSULTANT.

11. Modifications

The AGREEMENT may be modified or amended only in writing and signed by the Parties. No pre-printed or similar terms on any invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the AGREEMENT.

12. Notices

- A. All notices and communications under this AGREEMENT to be delivered to the CLIENT shall be sent to the address of the CLIENT as follows, unless and until the CONSULTANT is otherwise notified:

City of Aransas Pass
600 W Cleveland Blvd
Aransas Pass, TX 78336
ATTN: Sandra Garcia, Finance Director
sgarcia@aransaspasstx.gov

- B. All notices and communications under this AGREEMENT to be delivered to the CONSULTANT shall be sent to the address of the CONSULTANT as follows, unless and until the CLIENT is otherwise notified:

H2O Partners, Inc.
260 Addie Roy Road, Suite 150

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Austin, TX 78746
Attn: Eric Howard
eric@h2opartnersusa.com

13. Legal Construction

- A. The validity of this AGREEMENT and of any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by the laws of the State of Texas. Venue is in San Patricio County, Texas
- B. In case any one or more of the provisions contained in this AGREEMENT shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- C. This AGREEMENT contains the entire understanding between the parties and supersedes all prior agreements, oral representations and understandings. This Agreement may not be changed except by a written agreement signed by both parties. The persons signing this AGREEMENT warrant and represent that they have read and understood this AGREEMENT and are authorized to sign it on behalf of each party.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed on the day and year first above written.

H2O Partners, Inc.

City of Aransas Pass, Texas

BY: _____
NAME: Eric Howard
TITLE: Vice President
DATE: _____

BY: _____
NAME: Ram Gomez
TITLE: Mayor
DATE: _____

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