

PROFESSIONAL SERVICES AGREEMENT

Amendment No. 4

This Agreement, made and entered into this _____ by and between the **City of Dripping Springs**, Texas (hereinafter referred to as the “City”) and **HDR Engineering**, (hereinafter referred to as “Contractor”), is understood and agreed to be as set forth herein and is an amendment to the Agreement:

WHEREAS, the City and the Contractors entered into Professional Services Agreement for engineering services related to the Tax Increment Reinvestment Zones on January 2022; and

WHEREAS, tasks have changed including the need for project management tasks based on city staffing changes; and

WHEREAS, the Parties desire to add new tasks.

1. Description of Services. The City and the Contractor agree to the following:

- (a) Contractor shall deliver reports to City Hall via mail, in person, or other electronic means as appropriate.
- (b) Contract shall attend meetings of City Council, TIRZ Board, and related committee meetings as needed to update City on services.
- (c) Contractor shall conduct business in good faith displaying professionalism and a courteous manner in dealings with the staff, vendors, citizens, and customers of the City.
- (d) Contractor will report to the City Administrator, verbally or in writing, any conflicts between Contractor and any citizen, customer, or vendor in the course of performing said duties and responsibilities.
- (e) Contractor shall maintain complete and accurate records of work performed for the City. Contractor shall manage both public and confidential records that Contractor obtains pursuant to this Agreement with the understanding that some records may be subject to state open records laws. Contractor shall comply with the City’s public information policies and state law.

2. Scope of Work.

Project management and related services as shown in Exhibit “A”. Additional services may be agreed to in writing by both parties and billed at a negotiated rate as listed in the Professional Services Agreement for Engineering Services entered into on or around January 2022 and Professional Services Agreement for Engineering Services Amendments approved the City. Schedule to be set by the Scope of Work in Exhibit “A”.

3. Payment for Services

The City will pay the Contractor for the performance of this Amendment in current funds, not to exceed \$112,384.40. Invoices shall be sent each month and will be paid within 30 days of City's receipt and approval of each invoice. Payment shall be made in current funds to the address specified by the Contractor in the invoice, provided the services invoiced have been satisfactorily completed. If additional work is needed, payments in excess of the Cap must be approved by the City in writing.

4. Sales Tax Exemption

The City is exempt from payment of sales, use, rental and certain excise taxes in accordance with Chapter 151 of the Texas Tax Code. Contractor acknowledges and agrees that no such tax shall be included in any invoice or request for payment. City shall cooperate with the Contractor in providing any necessary documentation to evidence the City's tax-exempt status, including providing a completed Texas Sales and Use Tax Exemption Certification form upon request.

5. Invoice Rejection and Correction

The City reserves the right to reject any invoice that is incomplete, inaccurate, or not in compliance with the terms of this Agreement. In the event of an invoice rejection, the City will provide written notice to the Contractor specifying the reasons for rejection. The Contractor shall correct and resubmit the invoice within ten (10) business days of receipt of the rejection notice. The City's payment timeline will recommence upon receipt of the corrected invoice.

6. Duration

The work will be commenced on execution of the agreement and completed according to a timeframe to be agreed upon within 30 days of execution of this Agreement. This Agreement shall be in effect through to the completion of the Services and payment for such Services unless terminated as provided below or if all work associated with Agreement is completed.

7. Termination

Either party may terminate this Agreement by a thirty (30) day written notice.

8. Relationship of Parties

It is understood by the parties that Contractor is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Contractor. The City may contract with other individuals or firms for services of any kind.

9. Employees

Contractor employees, if any, who perform services for City under this Agreement shall also be bound by the provisions of this Agreement. At the request of City, Contractor shall provide adequate evidence that such persons are Contractor's employees.

10. Mandatory Disclosures

Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict of Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176). The Contractor also confirms it is in compliance with all Texas requirements related to government contracts including: (1) no boycott of Israel; (2) not listed as a foreign terrorist organization by the Texas Comptroller of Public Accounts; (3) Contractor does not have a policy or practice of discriminating against firearm entities or firearm trade associations; (4) Contractor does not boycott energy companies; and Contractor is compliant with all other Texas laws including any additional disclosure requirements.

11. Injuries/Insurance

Contractor acknowledges the Contractor's obligation to obtain appropriate insurance coverage with the City named as an additional named insured. Required insurance in Attachment "B". Contractor waives the rights to recovery from City for any injuries that Contractor may sustain while performing services under this Agreement. Contractor is to provide a copy of insurance coverage to City at least ten (10) days prior to the end of any existing coverage period if Contractor uses the services of any of Contractor's employees for the provision of services to the City. The City shall be named as an additional named insured on the Insurance.

12. Indemnification

Despite anything to the contrary in this Agreement, and in accordance with applicable law and the *Texas Constitution*, the City does not agree to indemnify the Contractor for any expenses in any way connected with this Agreement. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DRIPPING SPRINGS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EXCEPT TO THE EXTENT SUCH CLAIMS ARE CAUSED BY THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

13. Assignment

Contractor's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.

14. Notice

All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows, provided that either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

To the City:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Springs, TX 78620
(512) 858-4725

To the Contractor:

HDR Engineering
Attn: [Name]
[Address]
[City, State ZIP]
[Phone number or email address]

15. Entire Agreement

This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes and prior written agreements between the parties. If a conflict exists between this Agreement and the attachments, this Agreement shall prevail.

16. Amendment

This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.

17. Severability

If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

18. Waiver of Contractual Right

The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

19. Governing Law and Venue

This Agreement shall be construed under and in accordance with the laws of The State of Texas. The venue for any and all legal disputes arising under this Agreement shall be a court of competent jurisdiction located in Hays County, Texas. Despite anything to the contrary in this Agreement, no disputes arising out of or related to this Agreement shall be subject to arbitration or non-binding mediation unless both parties agree in writing to submit a specific dispute to arbitration or non-binding mediation after such dispute arises.

20. Consequential Damages

Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.

21. Force Majeure

Neither Party shall be liable for any delay or failure in performance to the extent caused by a Force Majeure Event, provided that the affected Party promptly notifies the other in writing and uses diligent efforts to resume performance. A “Force Majeure Event” means an event or circumstance beyond the reasonable control of the affected Party, including acts of God, war, terrorism, pandemics, natural disasters, or governmental actions prohibiting performance, but excluding (a) changes in market conditions, (b) increases in the cost of materials, labor, or transportation, (c) tariffs, duties, taxes, or other governmental assessments imposed after the Effective Date, and (d) shortages or delays caused by the Contractor’s subcontractors or suppliers.

22. Allocation of Price Risk

The Contractor assumes all risk of cost increases, including but not limited to increases in the price of raw materials, fuel, transportation, and any tariffs, duties, or import/export restrictions imposed or increased after the Effective Date of this Agreement. Under no circumstances shall the City be responsible for any price escalation or surcharge arising from such changes. Contractor warrants that the Contract Price is firm, fixed, and inclusive of all applicable current and future tariffs and similar charges.

23. No Extension or Adjustment

No Force Majeure Event shall entitle Contractor to an increase in the Contract Price or other compensation, nor an extension of the performance schedule, except where the City, in its sole discretion, agrees in writing. Notwithstanding the foregoing, Contractor shall continue to perform its obligations to the extent not affected by the Force Majeure Event.

24. Termination for Extended Force Majeure

If a Force Majeure Event prevents performance for more than thirty (30) consecutive days, the City may terminate this Agreement without liability, penalty, or further obligation by providing written notice to Contractor.

25. Site Access and Safety

City shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Contractor will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including City’s contractors, subcontractors, or other parties present at the site.

CITY OF DRIPPING SPRINGS

HDR ENGINEERING

Date

Date

ATTACHMENT “A”

ATTACHMENT “B”**CITY OF DRIPPING SPRINGS CONTRACTOR INSURANCE REQUIREMENTS:**

Firm providing goods, materials and services for the City of Dripping Springs shall, during the term of the contract with the City of Dripping Springs or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City of Dripping Springs as additional named insured as to all applicable coverage.
2. Provide for at least ten (10) days prior written notice to the City of Dripping Springs for cancellation, non-renewal, or material change of the insurance.
3. Provide for a waiver of subrogation against the City of Dripping Springs for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

Certificate of Insurance: Certificates of Insurance evidencing all of the required insurance coverages shall be submitted with the Firm’s submission. Copies of any modifications, amendments, renewals, or terminations of any coverage shall be promptly submitted to the City. If the contract is extended by the City of Dripping Springs, certificates of insurance evidencing all of the required insurance coverages shall be provided to the City prior to the date the contract is extended.

Type of Contract and Amount of Insurance:

- Statutory Workers Compensation insurance as required by state law.
- Commercial General Liability minimum limits of \$500,000 per occurrence for bodily injury, personal injury, and property damage.
- Automobile Liability with a minimum of \$500,000 Dollars combined single limit.