
**PROFESSIONAL SERVICES AGREEMENT FOR
PROGRAM AND PROJECT MANAGEMENT FOR EAST TEXAS REGIONAL
AIRPORT BETWEEN GREGG COUNTY, TEXAS AND**

1. PURPOSE:

This Professional Services Agreement (hereinafter, "Agreement") is entered into by and between Gregg County (hereinafter, "County"), acting by and through the Gregg County Commissioners Court (hereinafter, "Commissioners Court"), and _____ (hereinafter, "Contractor") County and Contractor may be referred to in this Agreement individually as "Party" and collectively as "Parties."

2. TERM:

The term of this Agreement is for a one (1) year period commencing _____ and ending one (1) year thereafter, unless terminated earlier under any provision hereof. This Agreement may be renewed at the option of County for two (2) additional based on existing terms, conditions, and fiscal year funding, as evidenced by formal written approval of the Commissioners Court and Contractor. Upon expiration of the term of this Agreement or any period of renewal, Contractor agrees to hold over the terms and conditions of this Agreement for such a period of time as may be reasonably necessary, but not to exceed 120 days, to renew or re-solicit the services provided under this Agreement.

3. SCOPE OF SERVICES:

(a) **Description of Services.** Beginning on _____, Contractor hereby agrees to provide and perform Program and Project Management Professional Services as required by Gregg County's East Texas Regional Airport and all services set forth in *Exhibit A – Vendor response to RFQ 2014-407*.

(b) **Availability.** Contractor understands and agrees that the necessities of the County, as specified under this Agreement, shall come before the needs of all other Contractor's clients. In the event that Contractor is unavailable for more than three (3) appointments during the term of this Agreement, Contractor understands that County could terminate contract. A list of the Gregg County holidays can be found at www.gregg.co.tx.us.

- (c) **Contract Administrator.** Throughout the term of this agreement with County, Contractor understands that the administrator of this contract is and shall be the Gregg County Airport Director. Contractor further understands that the administrator may change during this agreement and Contractor shall be notified of such change.

4. **CONTRACTOR'S OBLIGATIONS:**

- (a) **Licenses.** During the term of this Agreement and at no cost to County, Contractor shall ensure that the licenses/certifications necessary to providing services hereunder are continually maintained and current. Failure to maintain licenses/certifications and/or falsification of any licenses/certifications shall render Contractor non-compliant with contract specifications and be just cause for immediate termination of this Agreement.
- (b) **Representation of Qualifications.** Contractor shall accurately and completely represent his or her certifications, accreditations, training, education, and pertinent experience. Contractor shall bring to the Contract Administrator's attention any circumstances or conditions that impede full compliance with any requirements of this Agreement, including, but not limited to, inadequate knowledge of specialized terminology and must decline assignments under conditions that make such compliance unattainable. Contractor shall only provide professional services in matters in which they are confident of their capacity to consult accurately.
- (c) **Impartiality and Avoidance of Conflicts of Interest.** Contractor shall immediately disclose to the Contract Administrator any real, potential, or perceived conflicts of interest. Any conditions that interfere with the objectivity of a Contractor shall constitute a conflict of interest.
- (d) **Professional Demeanor** Contractor shall maintain a professional demeanor with all County Employees and other Contractors contracted by County. If County believes that Contractor is not maintaining a professional demeanor during the course of the fulfillment of this agreement, this agreement is subject to immediate termination. Any determinations as to Contractor's professional demeanor shall be made solely by County.
- (e) **Duty to Report Ethical Violations.** Contractor shall report to the Contract Administrator any effort to influence or impede the performance of his or her duties, or his or her compliance with any legal requirement, any requirements contained herein, or any other official rule, policy, or procedure governing East Texas Regional Airport and Gregg County, Texas.
- (f) **Meetings.** As requested by County, the parties shall periodically meet at a location designated by the parties or conduct a telephone conference call to discuss the performance of the parties' respective obligations hereunder. In order to facilitate proper management of the performance of this Agreement, Contractor shall immediately provide County with written documentation of any problem or circumstance encountered by Contractor which may prevent or tend to prevent Contractor from completing any of its obligations hereunder.

- (g) **County Site Rules and Regulations.** Contractor, while on County property, shall observe and comply with all County site rules and regulations, including, but not limited to, parking and security regulations. County, in its sole discretion, shall approve all Contractors requesting and/or requiring access to any County site or facility prior to admittance on County property.
- (h) **Background Check.** County reserves the right to conduct criminal background checks on Contractor. In the event Contractor's file/background check proves other than satisfactory, as determined solely by County, County reserves the right to have Contractor immediately removed from performing under this Agreement. If County determines that Contractor's file/background check proves other than satisfactory, in accordance with this subsection, County may immediately terminate this Agreement at County's discretion.

5. PAYMENT FOR SERVICES:

- (a) **Fixed Fee.** In return for the services and as its part of the cost, County agrees to pay to Contractor a fixed-fee in the amount of \$_____ **payable in monthly installments.**
- (b) **Installment Payments.** County and Contractor agree that the fixed-fee in Section 5(a) will be paid in twelve (12) installment payments of _____. All installments will be payable on the first of each month or reasonably thereafter.

6. REPORTING AND ACCOUNTABILITY:

- (a) **Reporting.** Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with requests by Contract Administrator. Contractor shall not be responsible, and shall not be penalized, for County's loss of documentation and reports.
- (b) **Ownership.** Contractor agrees that all information, data, and supporting documentation provided by County that relates to the services hereunder shall remain the property of County.

7. NON-EXCLUSIVE:

The Parties agree that this Agreement is non-exclusive, and further agree that County shall retain the right to contract with others for providing Contractor services in addition to Contractor. Additionally, this contract does not prevent Contractor from providing Contractor services for clients other than County as long as the rendering of such additional services does not interfere or prevent Contractor from strictly complying with the terms set forth in this Agreement. While this Agreement is non-exclusive, Contractor agrees that County's needs will take precedent over any of Contractor's other clients.

8. CONFIDENTIALITY:

Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the services under this Agreement, unless authorized by law.

Contractor agrees to adhere to all confidentiality requirements, as applicable, for the services performed for County under this Agreement.

9. INDEMNIFICATION:

CONTRACTOR AGREES THAT IT WILL PROTECT, DEFEND, INDEMNIFY, AND SAVE WHOLE AND HARMLESS THE COUNTY AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, JUDGMENTS, LOSS AND EXPENSES, INCLUDING ATTORNEY'S FEES, OF WHATSOEVER NATURE, CHARACTER, OR DESCRIPTION THAT ANY PERSON OR ENTITY HAS OR MAY HAVE ARISING FROM OR ON ACCOUNT OF ANY INJURIES OR DAMAGES (INCLUDING BUT NOT RESTRICTED TO DEATH) RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS, OR PROPERTY, ON ACCOUNT OF, ARISING OUT OF, OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR AGENT, SERVANT, EMPLOYEE OR SUB-CONTRACTOR OF THE CONTRACTOR IN THE EXECUTIVE PERFORMANCE OF THIS CONTRACT. CONTRACTOR FURTHER AGREES TO PROTECT, INDEMNIFY AND HOLD COUNTY HARMLESS AGAINST AND FROM ANY AND ALL CLAIMS AND AGAINST AND FROM ANY AND ALL LOSS, COST, DAMAGE, JUDGMENTS OR EXPENSE, INCLUDING ATTORNEY'S FEES ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS CONTRACT OF ANY FAILURE OF CONTRACTOR, ITS EMPLOYEES, OFFICERS, AGENTS, CONTRACTORS, INVITEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL THE REQUIREMENTS AND PROVISIONS HEREOF.

10. EXPENSES:

Contractor shall be responsible for all costs and other out-of-pocket expenses related to the fulfillment of the requirements of this Agreement.

11. INSURANCE:

Contractor agrees to maintain all insurance required by law for the performance of services under this Agreement and as required in RFQ 2014-407.

12. NONPERFORMANCE:

County, at its discretion, may consider a reasonable time to be thirty (30) calendar days to cure any problems and/or deficiencies with Contractor's performance, such problems and/or deficiencies being determined by County. Contractor's failure to perform its obligations, duties, and responsibilities in accordance with all terms and conditions of this Agreement will be considered in any future awards of contracts by County.

13. TERMINATION:

County reserves the right to terminate this Agreement immediately, in whole or in part, at its sole discretion, for the following reasons:

- (a) Lack of, depletion of, unavailability of, or reduction in, funding or resources allocated by County during the term of this Agreement or any extension hereof in accordance with Section 30 (Fiscal Funding Clause);
- (b) Non-performance by Contractor or Contractor's failure or inability to perform or substantially perform, for whatever reason, the services required under this Agreement;
- (c) Contractor's improper, misuse, or inept performance of services under this Agreement;
- (d) Contractor's submission of invoices, data, statements, and/or reports that are incorrect, incomplete, and/or false in any way;
- (e) Contractor's failure to comply with County's reporting requirements, the terms, conditions, or obligations of this Agreement, including any attachments hereto, applicable federal, state, or local laws, rules, regulations, and ordinances, or any other requirement set forth in this Agreement;
- (f) In County's sole discretion, if termination is necessary to protect constitutional rights and or is the in the best interest of the county;
- (g) If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
- (h) Contractor's inability to perform under this Agreement due to judicial order, injunction, or any other court proceeding.

14. NOTICE:

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person, sent via electronic mail, or mailed by overnight or registered mail, postage pre-paid, to the party who is to receive such notice, demand, or request at the addresses set forth below. Such notice, demand, or request shall be deemed to have been given on the date postmarked or given in person to the specified individual below.

TO COUNTY:

ROY MILLER
Airport Director

269 Terminal Circle
Longview, Texas 75603
Roy.Miller@co.gregg.tx.us

TO CONTRACTOR:

15. SEVERABILITY:

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

16. SOVEREIGN IMMUNITY:

This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that County has by operation of law. Nothing in this Agreement is intended to benefit any third party beneficiary.

17. COMPLIANCE WITH LAWS:

In providing services required by this Agreement, Contractor must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, industry, or profession, including maintaining any necessary licenses, certifications, and/or permits.

18. GOVERNING LAW AND VENUE:

The validity and interpretation of this Agreement, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas and, if any provision of this Agreement is held to be invalid, void, voidable, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect. This Agreement is performable and enforceable in Gregg County, Texas where the principal office of County is located and the state courts of Gregg County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

19. MEDIATION:

The parties agree to use non-binding mediation for dispute resolution prior to any formal legal action being taken on this Agreement.

20. AMENDMENTS AND CHANGES IN THE LAW:

Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law. County reserves the right to modify any terms of this Agreement, except Section 5, upon providing Contractor with ten (10) days written notice in accordance with Section 15. Amendments to this Agreement may be made at any time upon consent in writing from both County and Contractor.

21. THIRD PARTIES:

The obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no other person or entity shall be a third-party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

22. EMPLOYEES:

The Parties covenant and agree that each party will pay its own salaries, and all Social Security taxes, Federal and State Unemployment Insurance, Worker's Compensation Insurance and any similar taxes or expenses related to its own employees, including, but not limited to, license fees, insurance premiums and outfitting expenses. The Parties shall be responsible for complying with all Federal, State and Local laws, ordinances and regulations regarding its own employees.

23. ASSIGNMENT:

Contractor may not assign its rights and duties under this Agreement without the prior written consent of County and approval of the Commissioners Court, even if such assignment is due to a change in ownership or affiliation. Any assignment attempted without such prior consent and approval shall be null and void. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

24. CONTRA PROFERENTUM:

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be construed against the party who drafted the Agreement and such party shall not be responsible for the language used.

25. ENTIRE AGREEMENT:

County and Contractor agree that this Agreement, including any and all attachments, exhibits, and addendums incorporated as a part hereof, shall constitute the entire agreement relating to the subject matter hereof between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, and except as otherwise provided herein, this Agreement may only be modified in accordance with the terms herein. Each party acknowledges that the other party, or anyone acting on behalf of the other party, has made no representations, inducements, promises, or agreements, orally or otherwise, unless such representations, inducements, promises, or agreements are embodied in this Agreement, expressly or by incorporation.

26. BINDING EFFECT:

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

27. DEFAULT/CUMULATIVE RIGHTS/MITIGATION:

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. Contractor and County have a duty to mitigate damages.

28. FISCAL FUNDING CLAUSE:

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of this Agreement and any extensions thereto. Contractor shall have no right of action against County, except as delineated in Section 5 of this Agreement, in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Contractor at the earliest possible time prior to the end of its fiscal year. County must in all cases compensate Contractor for services rendered, notwithstanding any other provision of this Agreement.

29. INDEPENDENT CONTRACTOR:

Contractor, including its employees, agents, or licensees, is an independent contractor and not an agent, servant, joint enterprise, or employee of the County, and is responsible for its own acts, omissions, forbearance, negligence, and deeds, and for those of its agents or employees in conjunction with the performance of services covered under this Agreement, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor, agent, employee, or supplier of the Contractor and County by virtue of this Agreement. This provision of this Agreement shall not be for the benefit of any other party other than County and Contractor.

30. SUBCONTRACTING:

Contractor may enter into agreements with subcontractors that for delivery of the designated services outlined in this Agreement with prior written consent of and approval by County. Contractor agrees that it will solely be responsible to County for the performance of this Agreement. Contractor shall pay all subcontractors in a timely manner.

31. COUNTERPARTS, NUMBER/GENDER, AND HEADINGS:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

32. ASSURANCES:

- (a) In providing services required by this Agreement, Contractor agrees to observe and comply with all requirements, licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations. Contractor's failure to comply with this assurance shall be treated as a default and/or breach of this Agreement.
- (b) Contractor assures that no person will, on the grounds of race, creed, color, handicap, disability, national origin, sex, political affiliation, or beliefs, be excluded from, be denied the benefit of, or be subjected to discrimination under any service provided under this Agreement. Contractor agrees to comply with all federal and state statutes relating to nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. SS 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.S 794), which prohibits discrimination on the basis of handicaps; the Americans with Disabilities Act of 1990 (P.L. 101-336), which prohibits discrimination on the basis of disabilities; the Age Discrimination Act of 1975, as amended (42 U.S.C. SS 6101-6107), which prohibits discrimination on the basis of age; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol and drug abuse patient records; and any requirements of any other nondiscrimination statute(s) which may apply.
- (c) Contractor agrees to adhere to confidentiality requirements, as applicable, for the services performed for County under this Agreement, and any other confidentiality provisions or laws, whether federal or state, relating to the services being providing hereunder.
- (d) Contractor assures that it will not use any information, documents, or data provided to Contractor by County for any proprietary purposes and shall not copy, sell, exchange, disclose, or provide to others or use any information, documents, or data reasonably related to this Agreement for its own proprietary interests.

- (e) Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, licensing laws and regulations, and non-discrimination laws and regulations. When required, Contractor shall furnish the County satisfactory proof of compliance therewith.
- (f) Pursuant to Article 2.45 of the Business Corporation Act, Texas Civil Statutes, which prohibits County from entering into a contract with a corporation that is delinquent in paying taxes under Chapter 171 of the Texas Tax Code, Contractor, by executing this Agreement, hereby certifies that it is not delinquent in its Texas franchise tax payments, or that it is exempt from, or not subject to such a tax. A false statement concerning Contractor's franchise tax status shall constitute grounds for termination of this Agreement at the sole option of County.
- (g) Contractor certifies that it is in good standing and neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any federal or state department or agency.
- (h) Failure to comply with any of these assurances or any other requirements specified within this Agreement will place Contractor in default and/or breach of this Agreement.

33. PROMPT PAYMENT ACT:

Contractor agrees that a temporary delay in making payments due to County's accounting and disbursement procedures shall not place County in default of this Agreement and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

34. SIGNATORY WARRANTY:

The person or persons signing and executing this Agreement on behalf of Contractor, or representing themselves as signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he, she, or they have been duly authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all terms, conditions, and provisions herein set forth. Contractor shall furnish to County a corporate resolution authorizing signatory authority.

32. ACCEPTANCES:

By their signatures, below, the duly authorized representatives of County and Contractor accept the terms of this Agreement in full.

EXECUTED this _____ day of _____, 2014.

GREGG COUNTY:

**BY: Bill Stoudt, County Judge
Gregg County, Texas**

BY:

SAMPLE