

K 17-544
17-GA-072

COUNTY OF McLENNAN *

* **CONSULTING SERVICES AGREEMENT**

STATE OF TEXAS *

WHEREAS, the City of Waco has retained the services of Hicks-Ray Associates as an independent contractor to provide services including but not limited to new funding opportunities from Federal agencies and guidance on how to navigate the Federal regulatory and legislative processes,

THIS AGREEMENT is made between the CITY OF WACO (City) acting by and through its City Manager, and Hicks-Ray Associates (HRA), sometimes collectively referred to as the "parties".

1. Description of the Services. HRA will provide services to the City as described in its Proposal at Exhibit A, which is attached hereto and incorporated for all purposes. The parties may at any time modify the scope of the Services by meeting and mutually agreeing to changes in writing. These Services shall be provided in a timely and professional manner.

2. Term. The term of this agreement shall be approximately one year, through September 30, 2018. This agreement replaces any prior agreement, written or otherwise, between the parties. Either party may terminate this Agreement at any time by providing thirty (30) days advance written notice. In the event of such termination, the City shall be obligated to pay only for actual services provided by HRA and for expenditures incurred with the City's approval.

3. Project Cost. In consideration for the Services, the City agrees to pay HRA \$3,500.00 as a monthly retainer fee, with added fees (as set out in Exhibit A) for further services. HRA will provide the City with monthly invoices for services rendered. The City will pay all bills within thirty (30) days of receipt of same. In the event that a bill is unpaid for beyond thirty (30) days, HRA may terminate the contract and discontinue providing service. If terms are modified per Section 1 (Description of the Services), then service costs may change. If the total service costs at any time exceeds \$50,000.00, the agreement will require Waco City Council approval.

6. Ownership Rights. The City will own all of its proprietary information as included in the Services. All Services provided by HRA, and reports and notes prepared by HRA will be "works for hire" under applicable United States copyright laws, and therefore the property of the City. Upon request, HRA shall sign all documents necessary to confirm or perfect the exclusive Ownership interests of the City.

8. Confidentiality. HRA will not at any time or in any manner, either directly or indirectly, use for the personal benefit of HRA, or divulge, disclose, or communicate in any manner any information that is proprietary to the City (e.g., trade secrets, know-how, and confidential information). HRA will protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of the Agreement. Upon termination of the Agreement, HRA will return to the City all

records, notes, documentation and other items that were used, created, or controlled by HRA during the term of this Agreement.

9. Working Rules, Office Space, and Testing Time. HRA when working on the premises of the City, shall observe the working rules, and policies as outlined by the Public Works Director.

10. Independent Contractor. HRA is an independent contractor with respect to its relationship to the City. Neither HRA nor HRA's employees are or shall be deemed for any purpose to be employees of the City. The City shall not be responsible to HRA, HRA's employees, or any governing body for any payroll taxes related to the performance of the Services.

11. Insurance and Indemnification. HRA understands and agrees to the insurance requirements and indemnification clause(s) as set out in Exhibit B, which is attached hereto and incorporated for all purposes.

11. Promotion. HRA will not use the names, trademarks, service marks, symbols or any abbreviations of the City, without the prior written consent of the City.

12. Warranty – HRA. HRA warrants the services will be performed in a workmanlike manner and in conformity with generally prevailing industry standards. HRA represents and warrants that it has the unencumbered right and power to enter into and perform this Agreement and that HRA is not aware of any claims or basis for claims of infringement of any patent, trademark, copyright, trade secret, or contractual or other proprietary rights of third parties in or to any materials included by HRA in the Services or trade names related to the Services. If any of the materials included by HRA in the Services becomes the subject of an infringement suit, the City may terminate this Agreement and shall be entitled to a refund of any payments that it has made to HRA directly relating to the infringement suit. This indemnity shall not apply to materials provided by the City as contemplated by the following paragraph.

13. Warranty – City. The City represents and warrants to HRA that the City owns (or has a legal license to use) all photos, text, artwork, graphics, designs, trademarks, and other materials provided by the City for inclusion in any Service and that the City has obtained all waivers, authorizations, and other documentation that may be appropriate to evidence such Ownership.

14. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES HEREBY SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

15. Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR

ANTICIPATED PROFIT OR LOST BUSINESS, COSTS OF DELAY OR FAILURE OF DELIVERY, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE.

17. Assignment. This Agreement is not assignable, in whole or in part, by either party without the prior written consent of the other party. Any attempt to make such assignment shall be void.

18. Termination on default. If a party defaults by failing to substantially perform any provision, term or condition of their Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate this Agreement by providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default. The party in default shall have fourteen (14) days from the effective date of such notice to cure the default(s). Unless waived by the party providing the notice, the failure to cure the default(s) within such time period shall result in the automatic termination of the Agreement.

19. Taxes. The City shall pay the amount of any sales, use, excise or similar taxes applicable to the performance of the Services, if any, or, in lieu of such payment, the City shall provide HRA with a certificate acceptable to the taxing authorities exempting the City from payment of such taxes.

20. Certification of Taxes. HRA hereby certifies that it is not delinquent in the payment of any taxes owed to the City and will pay any taxes owed to the City so that such taxes will not become delinquent.

21. Interest of City officials. No member of the governing body of the City, and no other officer, employee, or agent of the City shall have any personal interest, direct or indirect, in this agreement.

22. Interest of other public officials. No member of a governmental body, subdivision or agency thereof located in McLennan County, Texas, who exercises any function or responsibilities in the review or approval of the carrying out of the project, goods, or services to which this agreement pertains shall have any personal interest, direct or indirect, in the agreement.

23. Discrimination. No one will, on the grounds of race, creed, color, national origin, disability, age, or gender be subject to discrimination in the performance of this agreement.

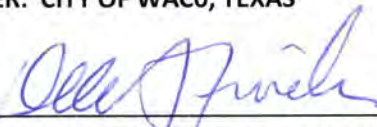
24. Force Majeure. Neither the City nor HRA shall be deemed in violation of this agreement if it is prevented by performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, act of God, acts of the public enemy, acts of superior governmental authority, riots, rebellion, sabotage, or other circumstances for which it is not responsible or which is not within its control.

26. Complete Contract / Amendment. This Agreement supersedes all prior agreements and understandings between the parties for performance of the Services, and constitutes the complete agreement and understanding between the parties. The parties may amend this Agreement in a written document signed by both parties.

27. Miscellaneous.

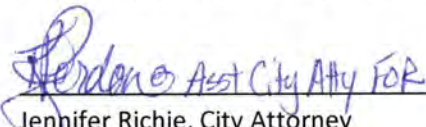
- a) Engineer acknowledges that effective September 1, 2017, the City is required to comply with Section 2270.001 of the Texas Government Code, enacted by House Bill 89 (85th (R) Texas Legislature), which requires that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. By executing this Agreement, Engineer verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.
- b) All exhibits described in this agreement are attached hereto and incorporated herein by reference for all purposes. At this time, there are no exhibits to this contract.
- c) Such misspelled words shall be read so as to have the meaning apparently intended by the parties.
- d) This agreement is governed by the laws of the State of Texas and venue shall be in McLennan County, Texas.

CUSTOMER: CITY OF WACO, TEXAS

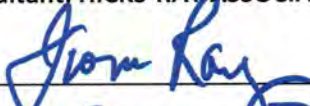
BY: 
Dale A. Fisseler, P.E., City Manager

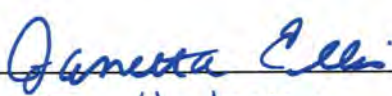
Date Signed: 12/1/17

APPROVED AS TO FORM & LEGALITY:


Jennifer Richie, City Attorney

Consultant: HICKS-RAY ASSOCIATES


BY: J. Tom Ray

WITNESS: 
Print Name: Janetta Ellis

Date Signed: 11/2/2017



PROPOSAL

TO: Wiley Stem
FROM: Tom Ray
DATE: November 2, 2017
SUBJECT: Fee and Cost Consideration for Hicks-Ray Associates Services

Fred and I are excited about the opportunity to serve the City of Waco. This memo is to provide you with a better understanding of the cost of our services, which we believe to be very reasonable relative to firms that provide similar services and based upon our track-record in helping our clients achieve long-term success in the Federal sector. Our goal is to deliver results including but not limited to new funding opportunities from Federal agencies and also guidance on how to navigate the Federal regulatory and legislative processes for the benefit of the City of Waco.

We have discussed several areas of HRA support. I highlighted three major areas of effort:

1. Secure ***federal funding through the Corps of Engineers***, particularly in response to the Lake Waco erosion and impacts on Lake Shore Drive and Continuing Authorities Program (CAP) projects;
2. Continued effort to secure ***federal funding through the Bureau of Reclamation and/or the Corps of Engineers*** for the Flat Creek Reuse project (these efforts would be coordinated with the McLennan County Water Resiliency Plan currently supported through a WaterSMART grant);
3. Identify Waco opportunities for ***improved federal support*** through the Section 3004 and other provisions of the FAST Act; and,
4. Supporting the City of Waco on Washington, DC trips and Capitol Hill appointments (in general providing advanced planning, assistance with preparing briefing papers to concisely present Waco positions, providing informed recommendations on appointments to support Waco's interests or positions, making appointments, preparing final itineraries, attending appointments Waco representatives)

Fees and Costs to the City

Retainer Basis. Based on these areas of service, Fred and I have discussed an appropriate fee basis. We typically operate with a monthly retainer set based on services provided to the client. We feel the following range of services is fair and gives you and Dale an opportunity to decide on the level of service most beneficial:

Fred B Hicks, PhD
703.866.4290

J Tom Ray, PE
254.855.0880



Levels of Service		
Services	Description of Services	Proposed Monthly Retainer Amount
Basic	For Items #1 and #2 above: Includes all efforts, immediate and future, to identify federal opportunities, evaluate, discuss recommendations with city staff, close funding agreements, assist the city with grant/funding requirements.	\$3,500
FAST / Trans	Assistance with transportation opportunities through the FAST Act, including identifying new opportunities based on successful efforts with other HRA clients	Basic Services + \$500 to \$1500 depending on level of effort
DC Mtgs	HRA will facilitate Washington DC city trips and meetings, including pre-planning and on-site assistance	Included in Basic Services plus expenses (depending on level of effort additional fees at time & materials may be requested)
McL Co Wtr Grp	Provide liaison services to federal issues and funding opportunities; including assisting County with WaterSMART grant related questions or issues	Included in Basic Services plus expenses

As we discussed, this table provides a range of fees for the anticipated services that would be of benefit to the City. We can certainly review, discuss and refine these further.

Other Costs.

Travel and Production Expenses. Reasonable travel expenses, approved in advance by the City are charged.

Production expenses can include presentation materials, etc., as needed.

Termination of Services. The City can terminate services at any time with 30-day notice appreciated.

Term of Contract. The typical contract is twelve months with the opportunity to renew.

EXHIBIT B
Insurance, Bonding, and Indemnification Requirements

Insurance

Prior to the commencement of any work under this Contract, Contractor shall furnish original proof of insurance to include completed/current Certificate(s) of Insurance, endorsements, exclusions, and relevant extracts from the insurance policy, or copies of policies to the City’s Risk Management Department, and shall be clearly labeled “Contract Name”, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such proof of insurance shall have been delivered to the City Risk Management Department, and no officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s General Services Director based upon changes in statutory law, court decisions, or circumstances surrounding this contract, but in no instance will City allow modification whereupon City may incur increased risk.

A Contractor’s financial integrity is of interest to the City; therefore, subject to Contractor’s right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

Type	Amount
Comprehensive General Liability Including: <ul style="list-style-type: none"> • Premises/Operations • Independent Contractors • Products Liability/Completed Operations • Personal & Advertising Injury • Explosion, Collapse, Underground • Broad form property damage, to include fire legal liability 	\$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles 	

c. Hired vehicles	(CSL basis).
Professional Liability (Claims Made Form)	\$500,000

Contractor shall attempt by reasonable diligence and in good faith to maintain and keep in force and effect liability insurance providing Contractor with professional liability coverage in a minimum sum of \$500,000.00 during the term of this contract and for a period of seven (7) years thereafter, either through an existing carrier or a carrier of comparable financial statute and reputation.

As of the date of this Agreement, HRA does not have any employees. If HRA later has employees, HRA shall obtain and maintain in full force and effect from the date HRA begins to have employees through the duration of this Agreement, at HRA's sole expense, insurance coverage in the following types and amounts:

Type	Amount
Workers' Compensation	Statutory
Employer's Liability	\$500,000/\$500,000/\$500,000

Term of Policy. The required coverage must remain in effect for a two (2) year period following the expiration of the contract with the City.

Proof of Insurance Required.

Examination & Approval. All insurance policies shall be subject to the examination and approval of the City for their adequacy as to form and content, form of protection, and financial status of insurance company.

When to Submit. Within ten (10) days after execution of the contract and prior to the commencement of any work or services under this contract, Bidder shall furnish to the Risk Manager for City originals of completed certificates of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy, or copies of the policies, plainly and clearly evidencing such insurance. Thereafter new certificates, policy endorsements, exclusions, and/or relevant extracts from insurance policies, or policies shall be provided prior to the expiration date of any prior certificate, endorsement, or policy.

Insurers. Bidder shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas and satisfactory to the City.

Additional Insured. Except for Workers' Compensation and Employers' Liability, the City, its elected officials, officers, servants, agents, volunteers and employees shall be named as additional insureds. No officer or employee, other than the Risk Manager, shall have authority to waive this requirement.

Other-Insurance Endorsement -- All insurance policies are to contain or be endorsed to contain the following additional provisions:

1. "Other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy; and
2. Provide not less than ten (10) calendar days advance notice to the City of any suspension, cancellation, non-renewal or material change in coverage.

Agent Information. The certificate(s) must be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City.

Precondition to Performance & Basis for Termination. The City shall have no duty to pay or perform under the contract until such certificate(s), policy endorsements, exclusions, and/or relevant extracts from the insurance policy shall have been delivered to the City's risk manager. Bidder understands that it is its sole responsibility to provide this necessary information to the City and that failure to timely comply with the requirements of this section shall be a cause for termination of this Agreement. If the City determines that it will deny payment, not perform, or terminate this contract because of the failure to provide certain information or documents, the City shall give Bidder notice of that determination and allow Bidder fifteen days to correct the deficiency.

Waiver of Subrogation. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

Notice of Cancellation, Non-renewal, Material Change. When there is a cancellation, non-renewal, or material change in coverage which is not made pursuant to a request by the City, Bidder shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Bidder knows of said change in advance, or ten (10) days' notice after the change, if the Bidder did not know of the change in advance. Such notice must be accompanied by a replacement certificate(s) of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy.

SELECTED BIDDER AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED PURSUANT TO THE CONTRACT AWARDED UNDER THIS REQUEST FOR BID AND HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH, THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS

ARE CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY. SELECTED BIDDER AGREES THAT ANY INSURANCE CARRIER INVOLVED SHALL NOT BE ENTITLED TO SUBROGATION UNDER ANY CIRCUMSTANCES AGAINST THE CITY, IT OFFICERS, OFFICIALS, AND EMPLOYEES.

Employee Litigation: In any and all claims against any party indemnified hereunder by any employee (or the survivor or personal representative of such employee) of Bidder, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, the indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Bidder or any such subcontractor, supplier, or other individual or entity under workers' compensation or other employee benefit acts.