

PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF CUERO, TEXAS,
AND
GRANT DEVELOPMENT SERVICES

STATE OF TEXAS §

§

COUNTY OF DeWitt §

This Agreement (“Agreement”), made and executed this _____ day of _____, 2021 by and between the City of Cuero, Texas acting by and through its duly authorized official, Raymie Zella, City Manager, (hereinafter referred to as the “City”) and Grant Development Services, (hereinafter referred to as “GDS”), acting by and through its duly authorized official J. Gandolf Burrus, President. The City and GDS are collectively referred to herein as the “Parties”.

Whereas the City desires that GDS develop and submit one application for recreational construction funding from the **2021 Small Community Grant** (hereinafter referred to as “Grant”) **from the Texas Parks and Wildlife Department** (hereinafter referred to as “TPWD”).

Now Therefore, in consideration of the premises and mutual undertakings of the parties hereto and in conformity with all applicable statutes and ordinances, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS. The above recitals, having been found to be true and correct, are incorporated herein by reference.
2. TIME OF PERFORMANCE: The services to be provided by GDS shall commence upon execution of this Agreement. All services required and rendered under this Agreement shall be completed by the November 6, 2021 deadline established by TPWD. The services provided under this Agreement shall terminate upon the final TPWD reimbursement of completed park elements.
3. SCOPE OF SERVICES: GDS shall provide the following professional services in connection with the preparation of the TPWD grant application as follows:
 - Conduct review of all previously submitted documents, Master Plans and applications submitted to the TPWD.
 - Conduct public meeting of stakeholders and residents to document public input into the planning process.
 - Conduct inventory of parks and open spaces.
 - Access condition of all existing recreational facilities
 - Coordinate with City designated engineer/ architect to develop cost estimates and materials descriptions required for submission.
 - Secure historical and demographic data needed to support the application.

- Coordinate all public notification activities and publications.
- Prepare and submit a complete application for funding assistance to TPWD.
- Prepare responses to any requests for additional information.

4. CITY RESPONSIBILITIES

To facilitate the commitments made by GDS, the City agrees to perform the following:

- A. The City designates City Manager Raymie Zella, as the City's coordinator with responsibility for all communication with, TPWD, GDS, and project engineer/architect
- B. The City shall agree to supply GDS with copies of all communication or correspondence received regarding its TPWD application:
- C. The City shall provide GDS with a letter authorizing GDS as its representative, to interact with TPWD on the behalf of the City:
- D. The City will assist GDS in securing from the City all documentation and support letters required for the preparation of the application:
- E. The City will obtain from a registered engineer or architect the required cost estimates, maps, illustrations and technical specifications of facilities to be included in the grant application:
- F. The City will publish public notices as required by TPWD. GDS shall verify that all such notices meet both State and Federal requirements for the TPWD program.

5. COMPENSATION:

- A. **GRANT APPLICATION:** GDS shall be compensated by the City for professional services rendered under this Agreement for application design and submission services as described in Section 3 above at a total cost of **\$2,500.00** (Two Thousand Five Hundred Dollars) This fee shall be payable as follows
 - **\$1,000.00** (One Thousand Dollars) shall be due upon receipt of authorization to proceed with application development from the City
 - **\$1,000.00** (One Thousand Dollars) shall be due upon City approval of the draft application and budget.
 - **\$500.00** (Five Hundred Dollars) shall be upon due proof of delivery of the completed grant application to TPWD prior to the application deadline of November 6, 2021.
- B. **HARD COST RECOVERY:** In addition to the payment of fees for professional services, the City will reimburse GDS for the hard costs incurred in connection with the preparation of the application and presentation materials including but not limited to GDS out-of-pocket expenses, including mileage, photocopies, mail and delivery charges, illustrations, maps and photographs. This fee will not exceed a **total of \$1,500.00** (One Thousand Five Hundred Dollars) without the advance written approval of the City and will be billed throughout the project.

- C. **GRANT COMMISSION:** If the Application **does not receive approval** of the TPWD, the City shall have no further financial obligations to GDS.

If the application **does receive approval** from the TPWD, City shall pay GDS to a Professional Services commission equal to **5% (Five Percent) of the grant funds secured**. The commission shall be considered earned when the City receives a Notification of Funding from the TPWD and shall be paid from local funds.

- D. **GRANT ADMINISTRATION:** GDS will perform all administrative services required to implement the TPWD Grant for a fee equal to **6.50% (Six and one half per cent)** of the total amount of the construction line item in the Grant construction contract. The City shall pay the administrative fee from local funds. The Scope of Services for Grant Administration is detailed in this Letter of Agreement in "Attachment A: "Professional Administration of a TPWD Small Community Recreation Grant".
- E. **INVOICES:** GDS shall periodically invoice the City for the fees due to GDS hereunder as described above in Section 5, A thru D. The City shall pay to GDS all undisputed invoiced amounts within thirty days of receipt of each invoice. City shall abide by the Texas Prompt Payment Act, Ch. 2251 Tex. Government Code in connection with payment for the professional services rendered under this Agreement.

6. **AMENDMENTS TO LETTER OF AGREEMENT:** The sum total of the sections set forth in this Agreement constitutes a legally binding contract between the City and GDS. This Agreement may be amended only in writing and shall require the mutual consent of both parties.

7. **GDS RESPONSIBILITIES:** In addition to the obligations outlined in Sections 2. "Time of Performance" and Section 3. "Scope of Services," GDS agrees to comply with all requirements of any and all applicable laws, rules, and regulations, Federal, State, and Local. GDS shall assume full responsibility for payments of Federal, State and Local taxes on contributions imposed or required under the Social Security, Worker's Compensation, and Income Tax Statutes for compensation received for services rendered under this Agreement. GDS recognizes that the City is employing GDS for its expertise in writing grants, and optionally for administering grants. In fulfilling its obligations under this Agreement, GDS shall exercise the skill and care appropriate to a firm that has professional grant writing and administration expertise.

8. **TERMINATION OF AGREEMENT:**

A. The City may terminate this Agreement if, through any cause, GDS shall fail to fulfill its obligations under this Agreement in a timely and proper manner, or if GDS shall violate any of the covenants, agreements, or stipulations of this Agreement. To effectuate the City's termination rights, City shall give written notice to GDS of such termination by certified mail, return receipt requested at the mailing address listed below in Paragraph 11 of Attachment A, such notice specifying the effective date thereof, at least fifteen days before the effective date of such termination. During such notice period, GDS shall have the opportunity to cure any allegations of breach as reflected in the City's notice letter.

B. If after the cure period cited above, the Agreement is terminated for cause by the City, no consideration is due GDS except reimbursement for actual out-of-pocket expenses incurred by GDS in connection with providing the professional services contemplated by this Agreement.

C. In the event this Agreement is terminated by the City for reasons other than good cause prior to the grant project's completion, GDS shall be entitled to receive just and equitable compensation for any work completed hereunder. All completed work will be billed at an hourly rate of Ninety-Five Dollars (\$95.00) per hour, but not more than the \$1500.00 hard costs as described in Article 5.B.

D. Upon termination of this Agreement, GDS and the City shall utilize good faith efforts to wind up their affairs and obligations arising under this Agreement in a businesslike and reasonable manner, and in a manner that fully protects the rights of the parties.

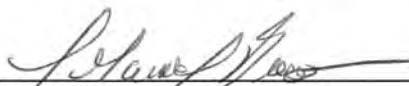
9. ADDITIONAL TERMS AND CONDITIONS: The Parties agree to honor and abide by the additional terms and conditions which are appended hereto as "Attachment B" and which are incorporated herein by reference.

EXECUTED in duplicate originals this _____ day of _____ 2021.

ATTEST:

Raymie Zella, City Manager
For the City of Cuero

Jennifer Zufelt, City Secretary
For the City of Cuero



J Gandolf Burrus, President
For Grant Development Services, Inc.

**ATTACHMENT A:
SCOPE OF SERVICES**

**FOR PROFESSIONAL ADMINISTRATION OF
TPWD SMALL COMMUNITY RECTREATION GRANT**

A. Project Management

1. Establish and maintain a grant project filing system.
2. Provide general advice and technical assistance to the City personnel on implementation of project and regulatory matters
3. Complete all necessary forms and procedures required for implementation of project.
4. Assist the Locality in meeting all special condition requirements that may be stipulated in the contract between the Locality and TPWD
5. Prepare and submit to TPWD documentation necessary for a Budget Modification or Amendment of the TPWD contract as needed
6. Conduct re-assessment of environmental clearance impacts before requesting any budget modifications
7. Prepare and submit quarterly reports (progress on design and construction).
8. Serve as liaison for the Locality during any monitoring visit by staff representatives from TPWD.
9. Assist City in registering the project with the Texas Department of Licensing and Regulation (TDLR)
10. Coordinate submission of construction plans to TDLR for review and comment.

B. Financial Management

1. Assist the Locality in establishing and maintaining a bank account (Direct Deposit account) and/or separate local bank account, journals and ledgers.
2. Assist the Locality in submitting the required Accounting System Certification letter, Direct Deposit Authorization Form (if applicable), and/or Depository/Authorized Signatory form to TPWD.
3. Prepare all reimbursement requests on behalf of the Locality in order to ensure orderly, timely payments to all contracting parties within the allotted time period.
4. Review invoices received for payment and file back-up documentation
5. Provide general advice and technical assistance to Locality personnel on implementation of project and regulatory matters
6. Assist the Locality in establishing procedures for the use of any TPWD program income.
7. Maintain financial files for close out audit

C. Environmental Review

1. Coordinate environmental clearance procedures with other federal or state agencies and interested parties responsible for implementing applicable laws.
2. Prepare any required re-evaluation of the environmental assessment submitted with the application.

3. Assist City in responding to any comments by TPWD.
4. Secure TPWD clearance to begin construction.

D. Construction Management

1. Establish procedures to document expenditures associated with local construction of the project (if force account is applicable).
2. Assist Locality in determining whether and/or what TPWD contract activities will be carried out in whole or in part via force account labor.
3. Assist Locality in determining whether or not it will be necessary to hire temporary employees to specifically carry out TPWD contract activities.
4. Assist Locality in maintaining adequate documentation of personnel, equipment and materials expended/used and their costs.
5. Assist Locality in documenting compliance with all federal and state requirements related to equal employment opportunity.
6. Assist Locality in documenting compliance with all federal and state requirements related to minimum wage and overtime pay requirements.
7. Request wage rates from Department of Labor.
8. Provide sample TPWD contract documents to engineer.
9. Advertise for bids.
10. Verify construction contractor eligibility with the System for Award management (hereinafter referred to as "SAM").
11. Review construction contract.
12. Conduct pre-construction conference and prepare minutes.
13. Submit any reports of additional classification and rates to US Department of Labor.
14. Review weekly payrolls, including compliance follow-ups. Conduct employee interviews.
15. Process and submit change orders to TPWD prior to execution.
16. Obtain TPWD approval of any Budget Modifications or Amendments prior to execution .
17. Provide general advice and technical assistance to Locality personnel on implementation of project and regulatory matters.

E. Audit / Close -Out Procedures

1. Coordinate final accessibility inspection by TDLR
2. Assist in documenting the resolution of any deficiencies documented in the TDLR final inspection
3. Secure final clearance letter from TDLR
4. Coordinate with TPWD to schedule final inspection.
5. Prepare invitation to TPWD to attend project dedication.
6. Assist Locality in resolving any monitoring and audit findings.
7. Prepare and submit the final Project Completion Report

ATTACHMENT B -Additional Terms and Conditions

- 1. Changes to Professional Services.** The City may, from time to time, request changes in the scope of the services of GDS to be performed hereunder. Such changes, including any increase or decrease in the amount of GDS' compensation, which are mutually agreed upon by and between the City and GDS, shall be incorporated in written amendments to this Agreement.
- 2. Personnel.**
 - A. GDS represents that it has, or will secure at his own expense, all personnel required in performing the services under this Agreement. Nor GDS nor such personnel shall be employees of the City. Such personnel shall have no contractual relationship with the City.
 - B. All of the services required hereunder will be performed by GDS or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under Federal, State and Local law to perform such services.
 - C. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracts hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement.
- 3. Assignability.** GDS shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto: provided, however, that claims for money by GDS from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly by GDS to the City.
- 4. Reports and Information.** GDS, at such times and in such forms as the TPWD may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
- 5. Records and Audits.** GDS will keep and maintain accurate books and records of the dates and time periods for which it has furnished Professional Services pursuant to this Agreement and shall allow the City to review and inspect such information upon request during the term of this Agreement for purposes of assuring compliance with the terms of this Agreement and State and Federal laws, rules and regulations. GDS and the City shall ensure that reasonable steps are undertaken to ensure confidentiality in the sharing of such records and information, to the extent applicable.
- 6. Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by GDS under this Agreement are confidential and GDS agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

- 7. Copyright.** No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of GDS.
- 8. Compliance with Applicable Laws.** GDS shall comply with all applicable laws; ordinances and codes of the Federal, State and local governments, and GDS shall save and hold the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
- 9. Equal Employment Opportunity.** During the performance of this Agreement, GDS agrees as follows:
- A. GDS will not discriminate against any employee or applicant for employment because of race, creed, sex, color, handicap or national origin. GDS will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, handicap or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. GDS agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
 - B. GDS will, in all solicitation or advertisements for employees placed by or on behalf of GDS, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, handicap or national original, political or religious opinions or affiliations, or sexual orientation.
 - C. GDS will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
 - D. GDS will include the provisions A. through C. in every subcontract or purchase order unless exempted.
- 10. No Discrimination.** GDS and the City agree in the performance of this Agreement there will be no discrimination against any person or persons on account of race, color, sex, sexual orientation, religion, age, disability, national origin, or veteran status and both parties agree to comply with all applicable requirements of the Civil Rights Act of 1964, as amended, Executive Order 11246, the Vietnam Era Veteran's Readjustment Act of 1974, the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1974, the Americans with Disabilities Act of 1974, the Americans with Disabilities Act of 1990, and all federal rules and regulations, state laws and executive orders as applicable.

11. Address of Parties For Notices:

To City:

City of Cuero, Texas
Attn: Raymie Zella
City Manager
101 North Fifth Street
Cuero, Texas 76559

To GDS:

Grant Development Services
Attn: JGandolf Burrus, President
Grant Development Services.
Post Office Box 33043
Austin, Texas 78764

Or to such other address as may from time to time be specified in a notice given to the other party at the address provided in this Section.

12. Jurisdiction. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in DeWitt County, Texas. Venue for any legal proceedings to enforce or interpret this Agreement shall be in a court of appropriate jurisdiction in DeWitt County, Texas.

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14. Enforcement Costs. If any party hereto institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

15. No Other Agreements. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating herein shall be valid or binding. Neither this Agreement nor any duties or obligations hereunder shall be assignable by either party without the prior written consent of the other.

16. Amendments To this Agreement. This Agreement, including the Attachments thereto constitutes a legally binding contract between the City and GDS This Agreement may be amended only in writing and shall require the mutual consent of both parties.

17. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed to be an original for all purposes.

18. Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision will be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.