

ELH Services, LLC 1st AMENDED PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into on this 12th day of September, 2013, by the City of Hobbs, New Mexico, (hereinafter "City"); and ELH Services, LLC, (hereinafter "Consultant") for the purpose of providing technical consultation and planning to the City in conjunction with several municipal projects.

RECITALS:

The City has a need to contract with a qualified consultant to carry out professional services including mediation, contract negotiation, labor negotiation, and technical writing.

NOW, THEREFORE, the parties hereto do mutually agree as follows,

1. Scope of Work.

The Consultant shall furnish to the City its professional services necessary to complete various special small projects for the City of Hobbs on an as-needed basis.

PROJECT ONE

- A. Consultant shall provide consulting services to establish a land bank for City and establish affordable housing projects for City. Specifically, consultant shall assist with acquiring property to develop an appropriate Request for Proposal for a 4% affordable housing project. City shall pay Consultant the sum of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00) plus reasonable expenses (including two (2) trips to and from Hobbs) and gross receipt tax.

PROJECT TWO

- B. Consultant shall assist City staff in soliciting and receiving a 9% Tax Credit Housing proposal for fiscal year 2014. City shall pay Consultant \$100.00 per hour plus reasonable mileage, expenses and gross receipt tax.

Consultant and City shall negotiate on future projects to be approved by City Manager on behalf of the City.

- C. The Consultant realizes that time is of the essence for the performance of the work. The completion time for the work shall be established at the start of the work project, except that any delay by the City to provide information to the Consultant shall not be grounds for penalty to the Consultant. In the event any of the services contracted under this Agreement are not completed on or before an agreed completion date or any negotiated extension of the completion date for a work order, it is agreed that the City may terminate this Agreement.

2. Payment for Services.

- A. The City shall pay for the work program based on the Consultant's timely and satisfactory completion of the work. City shall pay Consultant ONE HUNDRED DOLLARS(\$100.00) PER HOUR plus reasonable expenses and gross receipt tax.

B. If any additional work is authorized for technical or administrative services under this Agreement, the City will specify payment details and other terms in the work order.

3. City Responsibilities.

At no cost to the Consultant, the City will provide plans to review, information on potential projects, available data and maps, and all other necessary information. City staff members and officials will be available to provide further information as needed by the Consultant. City will also provide such other assistance as referenced in the Agreement.

4. Compliance with Appropriate Laws.

The Consultant agrees to comply with all Federal, State, and Local laws and ordinances applicable to this work, including the Civil Rights Act.

5. Term of Agreement and Termination.

The term of this agreement shall be two (2) years from the date of execution above, unless terminated by the parties hereto. This Agreement may be terminated by either party upon written notice delivered at least ten (10) days before the intended date of termination. By such termination neither party may nullify obligations already incurred for performance or failure to perform before the date of termination.

6. Status of Consultant.

The Consultant, and its agents and employees, are independent consultants performing services for the City, and are not employees of the City of Hobbs. The Consultant and its agents and employees shall not, as a result of this Agreement, accrue any leave, retirement, insurance, bonding, use of City vehicles, or any other benefit afforded to employees of the City.

7. Assignment of Agreement.

The Consultant shall not assign or transfer any interest in this Agreement.

8. Subcontracting.

The Consultant may not subcontract any portion of the services to be performed under this Agreement without the City's prior written consent, except for those approved subcontractors identified in Consultant's Proposal.

9. Governing Law.

This Agreement shall be governed by the laws of the State of New Mexico.

10. Final Payment.

The Consultant, upon final payment of all amounts due under this Agreement, releases the City and its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. Amendments.

This Agreement shall not be altered, changed, or amended except by written instrument executed by both parties.

12. Notice.

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Manager, City Hall, 200 E. Broadway, Hobbs, NM 88240 and to Consultant, at 4111 Camino Bonito, Las Cruces, NM 88011 or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

13. Ownership of Work Products.

All drawings, plans, studies, work products, etc. completed under this Agreement shall be the property of the City following payment for services rendered pursuant to the terms of this Agreement.

14. Attorney's Fees and Costs.

If either party is found by a court to have breached this Agreement, the other party may recover reasonable attorney's fees and cost of litigation. Prior to the institution of any litigation, the parties have the contractual duty to in good faith attempt to resolve any controversy hereunder at the least possible expense.

15. General Provisions.

- A. Indemnification. Contractor agrees to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual Commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses, and liens of every kind and nature, including but not limited to court costs and attorney's fees, arising or alleged to have arisen out of Contractor's performance of the contract, Contractor's negligent provision of services or failure to render services, or any breach of this contract.
- B. Entire Agreement. The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.
- C. This contract is not valid until the document is approved by the legal counsel at New Mexico Public Employees Retirement Association.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year above mentioned.


City of Hobbs


By: City Manager

ELH Services, LLC


By: Eric Honeyfield, Principal

Approved as to form:


Michael H. Stone, City Attorney

ATTEST:


Jan Fletcher, City Clerk