

CONTRACT FOR ON-CALL PROFESSIONAL SERVICES BETWEEN EL PASO COUNTY & MNK ARCHITECTS, INC.

This CONTRACT FOR AS-NEEDED ON-CALL PROFESSIONAL SERVICES ("Contract") is made and entered into by the County of El Paso, Texas ("Owner") and **MNK Architects, Inc.** ("Consultant").

Whereas, the Owner intends to engage Consultant to perform On-Call Professional Services for El Paso County projects to be performed on a task by task basis through the use of work orders referencing and relying on this Agreement, the scope of which is further described under Request for Qualifications Number 2024-017 entitled "As Needed Architectural & Engineering Services for the El Paso County, Texas" (the "RFQ" and "Exhibit A") and Consultant's response to the RFQ ("Exhibit B") both attached and incorporated into this Contract as Attachment A and Attachment B respectively.; and

Consultant has been selected to perform services as required by the Owner and Consultant was selected through Owner's competitive procurement process, in accordance with all applicable state laws and regulations; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated in this Contract, and for other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Owner and the Consultant agree:

Attachments: This Contract includes the following documents, which are all fully incorporated by this reference:

- (1) the Request for Qualifications, **Exhibit A**;
- (2) Consultant's Response to the Request for Qualifications, **Exhibit B**;
- (3) Sample Work Order, **Exhibit C**

GENERAL SCOPE OF WORK. Owner will request professional services on demand for various projects. Consistent with this Contract, Consultant will provide these services in response to Owner's specific and individual task (Project) assignments. Consultant will provide services per the Owner's RFQ 24-017 scope of work. Generally, this scope of work includes, but is not limited to, (i) architectural design services; (ii) civil engineering services; (iii) surveying; (iii) right-of-way mapping; (iv) schematic design; (v) environmental studies; (vi) public involvement activities; (vii) plans, specifications and estimates (PS&E); (viii) project management and administration, (ix) technology and IT consulting; (x) traffic engineering; (xi) roof consulting and (xii) other services as further described in the RFQ (**Exhibit A**).

TERM. The term of this Contract is three (3) years from full execution with the possibility of a four (4) one-year options to renew. Notwithstanding the expiration of the contract term, Consultant shall continue to provide Services with respect to any Project that is not completed

prior to the expiration of the contract term, until the Project is fully and satisfactorily completed.

1.

CONSULTANT REPRESENTATIONS AND WARRANTIES

By executing this Contract, Consultant makes the following express representations and warranties to Owner:

(A) Consultant is an independent contractor and professionally qualified to perform the services assigned in each task order for each Project assumed under this Contract and is licensed by and registered with appropriate entities having jurisdiction over the Consultant and each Project.

(B) Consultant shall perform its services consistent with all rules applicable to its professional practice and licensure, and the professional skill and standards ordinarily provided by like professionals practicing in the same or similar locality under same or similar circumstances. Consultant shall perform its services as expeditiously as is consistent with the professional skill, standard of care, and orderly progress required for each Project.

(C) Consultant and those it contracts with, retains, or employs to do Project work or services, shall have and maintain all necessary licenses, certifications, permits or other authorizations necessary to perform on each Project until their duties and obligations have been fully satisfied.

(D) At a minimum, Consultant is experienced with certified to perform the services environmental, surveying, and engineering project services as required under RFQ 2024-017 and represented by Consultant.

(E) Consultant has become or will be familiar with each Project, site and the conditions under which each Project is to be designed, handled, and performed.

(F) Consultant shall prepare all documents and things required by this Contract including, but not limited to, reports, tests, notices, in such a manner that these shall be accurate, coordinated and adequate for the Project and shall be in compliance with all applicable law, code, and regulation.

(G) Consultant assumes full responsibility to Owner for the improper acts and omissions of Consultant, its employees, or others employed or retained by Consultant in connection with each Project.

2.

INITIAL SCOPING, ASSESSMENT, REPORT AND PROPOSED FEE

Owner shall contact Contractor on an on-call basis with any proposed Project and its scope of work. Prior to the preparation of a Work Order for any Project, Consultant shall first consult in detail with Owner and shall carefully assess any information provided by Owner concerning Owner's purposes, concepts, desires and requirements for that Project (the

“Owner’s Criteria”), including but not limited to, any design, construction, scheduling, budgetary or operational Project needs, restrictions or requirements. Following such assessment, Contractor shall prepare and submit to Owner a written report detailing Contractor’s understanding of Owner’s Criteria and identifying any design, construction, scheduling, budgetary, operational, or other problems or recommendations, including environmentally responsible approaches for that Project consistent with the Owner’s Criteria. The Contractor’s written report shall also include, as appropriate, proposed solutions addressing each identified problem, budgetary construction cost, and a proposed flat fee or hourly not-to-exceed amount for performance of all professional services required for completion of the Project.

3. WORK ORDER

(A) Consultant and Owner will review the written report required by Paragraph 2 above and may agree upon any proposed solutions to identified problems resulting from the Owner’s Criteria. Once Agreement has been reached on the scope of work for a Project, Consultant will, within ten (10) business days confirm acceptance of the scope of work and present a Work Order proposal to Owner including the final proposed price for the Project.

- . If the final proposed price for the Project is \$10,000 or less, the Work Order will be presented to the El Paso County Chief Administrator (or her designated representative for Owner’s acceptance and approval. Upon acceptance by the County Administrator, Owner shall issue written Notice to Proceed (“NTP”) to release Consultant to proceed.
- . If the final proposed price for the Project is greater than \$10,000, each Work Order proposal must be presented to the El Paso County Commissioners Court for acceptance and approval. Upon Owner’s acceptance of Work Order proposal, Owner shall issue written Notice to Proceed (“NTP”) to release Consultant to proceed.

(B) Each Work Order shall contain a detailed scope of work, including a description of the professional services to be provided by the Consultant, any specific deliverables agreed to by the Parties and the time frame for completion of the Project identified in the Work Order. In the event of a conflict between the terms of this Agreement and a specific Work Order, the terms in the Work Order will take precedence for that Project.

3. CONSULTANT DUTIES AND RESPONSIBILITIES

For the duration of each Project, and at all times relevant, Consultant shall have and shall perform the following duties, obligations, and responsibilities:

(A) Consultant shall promptly provide services as necessary and collaborate well with Owner’s representatives and consultants for the proper execution of the work.

- (B) Consultant shall reject in writing any work that is defective and/or not in compliance with Project and Owner requirements, unless directed by the Owner, in writing, not to do so.
- (C) Consultant shall perform inspection or re-inspection and testing or retesting of the work as appropriate and in accordance with Project and Owner requirements. Further, Owner shall pay for the first set of inspections or tests. Any additional tests or inspections necessary due to an initial failure are the responsibility of Consultant and/or its contractor/vendor.
- (D) Consultant shall promptly advise Owner concerning requests for change orders. Upon request by Owner, Consultant shall draft change orders, whether initiated by Owner and/or Consultant and approved by Owner, in accordance with Project and Owner requirements.
- (E) Consultant shall testify in any judicial or other proceeding concerning a Project when requested in writing by Owner, and Consultant shall make available to Owner any personnel or consultants employed or retained by Consultant for the purpose of reviewing, studying, analyzing or investigating any claims, contentions, allegations, or legal actions relating to, or arising out of, a Project.
- (F) Consultant shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the Consultant, its employees, and/or others Consultant may retain or hire on the Project.
- (G) Consultant shall not accept or offer gifts or anything of value nor enter into any business arrangement with any Owner employee, official, or agent.
- (H) Consultant shall not sell, assign, transfer, or convey any of its rights or obligations under this Contract, in whole or in part, without the prior written consent of the Owner.
- (I) Consultant will provide any and all notices as may be required under the Drug Free Work Place Act of 1988, 28 CFR Par 67, Subpart F, to its employees and all sub-contractors to ensure that the Owner maintains a drug free work place.
- (J) Consultant shall have and perform additional duties, obligations, and responsibilities as identified in each Work Order as necessary to complete each Project.

4. RELEASE AND INDEMNITY

THE SERVICES TO BE PERFORMED UNDER THIS CONTRACT WILL BE PERFORMED ENTIRELY AT CONSULTANT'S RISK. CONSULTANT HEREBY WAIVES AND RELEASES ANY AND ALL CLAIMS, CAUSES OF ACTION AND OTHER DEMANDS WHICH IT MAY HAVE AGAINST OWNER FOR ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE ARISING OUT OF OR RELATED TO THESE SERVICES AND/OR CONTRACT.

CONSULTANT AGREES TO INDEMNIFY AND PROTECT OWNER FROM ANY CLAIMS INVOLVING INFRINGEMENTS OF PATENTS, TRADEMARKS, OR COPYRIGHTS.

ONLY TO THE EXTENT ALLOWED BY APPLICABLE LAW INCLUDING TEX. GOV'T CODE SECTION 2254.0031, CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER FROM AND AGAINST ANY BREACH OR DEFAULT UNDER THIS CONTRACT, ANY LIABILITY, CLAIM, ACTION, INJURY, DEATH, LOSS, DAMAGE, COST, FINE, EXPENSE, OR PENALTY ARISING OR RESULTING FROM, AND TO THE EXTENT ATTRIBUTABLE TO OR CAUSED BY, THE ERROR, OMISSION, OR NEGLIGENCE OF CONSULTANT, ITS EMPLOYEES, CONSULTANTS, OR CONTRACTORS, ON ANY PROJECT SERVICED OR WORKED UNDER THIS CONTRACT.

CONSULTANT SHALL DEFEND OWNER THROUGH COUNSEL CHOSEN BY THE OWNER AND THE CONSULTANT SHALL BEAR ALL COSTS, FEES AND EXPENSES OF SUCH DEFENSE, INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, COURT COSTS, AND EXPERT WITNESS FEES AND EXPENSES.

These Section 4 provisions survive termination of this Contract.

5.

PAYROLL TAXES

Consultant shall be fully responsible for payment of any and all taxes and insurance, including, but not limited to federal, state and local income taxes, and payroll taxes (such as FICA, federal and state unemployment insurance, etc.) and shall make such statutory filings as may be required by law.

6.

WAIVER

Owner makes no warranties or representations as to Consultant's status as it pertains to Consultant's deductions or filing of any income or other tax liabilities.

Consultant shall not be entitled to make and hereby waives to the extent permitted by law any unemployment claims to any federal, state or local governmental agencies which claims are chargeable to Owner arising in any way out of Owner's termination of Consultant's services under Section 13 below.

7.

TIME OF THE ESSENCE

Time is of the essence in the performance of any Project under this Contract. Within fifteen (15) calendar days of accepting a Project proposed by Owner, or a change or adjustment

thereto, Consultant shall provide Owner with appropriate services as specified by Owner and Project requirements.

8.

PERSONNEL

Consultant shall assign only licensed and qualified personnel, including consultants and contractors, to perform any service or work on any Project under this Contract.

9.

COMPENSATION

For its assumption and performance of the duties, obligations and responsibilities set forth in this Contract, the Consultant shall be paid as follows:

(A) For satisfactory performance of the duties, obligations, responsibilities, and services required in this Contract and authorized by Owner, Consultant and its personnel shall be paid pursuant to accepted service fees listed on a per-project basis.

(B) Flat Fee Basis. For projects to be performed on a flat fee basis, the total proposed compensation and schedule for payments shall be set forth in writing. The Owner may accept the proposed compensation and schedule for payments or may propose another amount or schedule and the parties shall negotiate. Once the Parties have negotiated a fair and reasonable amount for compensation and a payment schedule, that agreement shall be documented in writing which shall control the compensation and payment schedule for that Project.

(C) Hourly Not-To-Exceed Basis. For projects to be performed on an hourly Not-To-Exceed basis, the Not-To-Exceed amount and schedule for payments shall be set forth in writing. The Owner may accept the proposed Not-To-Exceed amount and schedule for payments or may propose another amount or schedule and the parties shall negotiate. Once the Parties have negotiated a fair and reasonable Not-To-Exceed amount for compensation and a payment schedule, that agreement shall be documented in writing which shall control the compensation and payment schedule for that Project and will take precedence over any prior agreements addressing compensation and payment schedule for that Project.

(D) In addition to the payments provided for in this Contract, Consultant shall be entitled to receive payment for reasonable expenses it incurs and the Owner approves in connection with that Project. Such expenses, however, are limited to transportation, long distance calls, actual cost of copying and postage or other reasonable mode of transmission and any and all other disbursements made by Consultant after first receiving written authorization from Owner.

(E) If in the course of a Project, Consultant's duties, obligations and responsibilities are materially changed through no fault of the Consultant, compensation due to the Consultant shall be equitably adjusted, either upward or downward, by agreement of the parties.

(F) As a condition precedent for any payment due under this Section 9, and as agreed in writing by Owner, Consultant shall submit invoices to Owner requesting payment for services

properly rendered and expenses due under this Contract. Consultant's invoice shall describe with reasonable particularity each service rendered, the date rendered, the time expended, percentage completion as applicable, and the person(s) rendering the service. Consultant's invoice shall be accompanied by any data and documentation as the Owner may require in support of expenses for which payment is sought. As applicable, the invoice shall reflect any allocations and state the percentage of completion as to each such allocation. Each invoice shall bear the signature of the Consultant, which signature shall constitute Consultant's representation to Owner that the amount requested is currently due and owing, there being no reason known to the Consultant that payment of any portion of the amount requested should be withheld.

(G) For satisfactory service and work, Owner shall make payment to Consultant of all sums properly invoiced under the provisions of this Contract within thirty (30) days of the Owner's receipt and approval of the invoice.

(H) In the event Owner becomes credibly informed that any representations of the Consultant are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy, and the cause of the misrepresentation or inaccuracy, is corrected to the Owner's reasonable satisfaction.

10.

PROJECT RECORDS

All records relating in any manner to any Project, or any designated portion of a Project, in the possession of Consultant or its contractors or consultants shall be made available to Owner for inspection and copying upon written request of Owner. Additionally, the records shall be made available, upon request by Owner, to any state, federal or other regulatory authorities and any of the authorities may review, inspect and copy the records. The records include, but are not limited to, all submittals, correspondence, memoranda, drawings, recordings, videos, or other writings or things that document a Project, its design, progress, and completion. These records expressly include any documents reflecting the time expended and expenses incurred by Consultant, its personnel, contractors, and consultants in performing under this Contract. Consultant shall maintain and protect these records for no less than four (4) years after final completion of each Project, or for any longer period of time as may be required by a pending claim, audit, event, applicable law, or good practice.

11.

TITLE TO WORK PRODUCT

All information and data made or developed by Consultant in the course of performance under this Contract shall be the property of Owner, and any documents, information or other data made, developed, or accumulated by Consultant shall be promptly delivered to Owner upon demand, but in any event upon the expiration or termination of this Contract for any reason whatsoever.

12.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

Owner shall have and perform the following duties, obligations and responsibilities to the Consultant:

(A) Owner shall provide Consultant with the Owner's criteria and requirements for each Project.

(B) Owner shall perform its duties set forth in this Section 12 in a timely manner.

(C) Owner will designate an employee as project manager on each Project to serve as Owner's principal point of contact throughout the course of that Project, to oversee the orderly progression and delivery of work and services, ensure compliance with Project requirements, provide interpretations as necessary/applicable to assist progress of the work, facilitate communication and coordination among consultants/contractors/agents, and address any issues that may arise.

(D) Owner shall review any documents provided by or through the Consultant requiring the Owner's decision and shall make any required decisions.

(E) Except for documents requiring Owner's decision as set forth above, Owner's review of any documents prepared by Consultant or its contractors or consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's criteria and requirements. No review of such documents shall relieve Consultant of its responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.

(F) Owner is a tax exempt political subdivision of the State of Texas that will not be liable for any taxes from which it is exempt. Nothing in this Contract modifies or waives any sovereign immunity, defense, lien or indemnity prohibition, or limit of liability enjoyed by Owner, its elected officials, or employees at common law or under other Texas law. A condition precedent for funding to pay services referenced in this Contract is annual appropriations by Owner's governing body. Owner is subject to the Open Meetings Act and Public Information Act, Chapters 551 and 552, respectively, Texas Government Code, which may require disclosure of information despite confidentiality, proprietary, or other provisions to the contrary. As concerns any payment, the Texas Prompt Payment Act, Government Code, Sec. 2251.001 et seq., applies to Owner and this Contract. Texas Local Government Code Section 262.007 applies to any claim for breach of this Contract.

(G) The parties expressly agree that, in all things relating to this Contract, the Owner is performing a governmental function, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the Owner, which in any way pertains to or arises out of this Contract, falls within the definition of governmental function.

13.

INSURANCE

At its own expense, Consultant shall procure and maintain for the Contract term, the insurance listed below in the indicated amounts. Proof of coverage is required prior to Consultant commencing work on any Project.

All policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. Except for professional liability and workers' compensation, these policies shall name Owner, El Paso County, Texas as an additional insured. Consultant shall furnish to the County Risk Manager a certificate from each insurer showing insurance to be in effect as required. This certificate shall provide that written notice of cancellation or any material change in the policy shall be delivered by the insurer to the County Risk Manager at least thirty (30) days in advance of any cancellation or change.

In addition, Consultant shall require its contractors and consultants to maintain professional liability and general liability insurance as appropriate for the work and services provided. **Subrogation is waived to the maximum extent such waiver favors and benefits El Paso County.**

General Liability

\$1,000,000 – each occurrence
\$1,000,000 – annual aggregate per Project
\$1,000,000- personal and advertising injury
\$1,000,000 – products/completed operations – aggregate
\$500,000 – fire legal damage liability
\$5,000 - premises medical expense
Waiver of subrogation

Automobile

\$1,000,000 – each occurrence
Waiver of subrogation

Professional Liability (Errors and Omissions)

\$1,000,000 - annual aggregate per Project

Workers' Compensation

\$1,000,000 – Employers Liability – each accident
\$1,000,000 – Employers Liability – each employee
\$1,000,000 – Employers Liability – disease – policy limit
Statutory Limits
Waiver of Subrogation

14.

TERMINATION

Owner reserves the right to enforce performance of this Contract in any manner prescribed by law or deemed to be in the best interest of the Owner in the event of breach or default.

Either party shall be entitled to terminate Consultant's services without cause, and for convenience, upon thirty (30) days' written notice to the other party. Owner reserves the right to terminate the Contract immediately in the event Consultant fails to perform as required.

In the event of termination for any reason, Owner shall incur no liability to Consultant whatsoever other than for payment of compensation as expressly provided in this Contract for work actually completed and expenses actually incurred up to the date of the termination. Owner does not in any way guarantee the availability or continuation of work or services to be performed by Consultant.

15.

APPLICABLE LAW AND VENUE

This Contract is governed by the laws of the State of Texas, its choice of law or conflicts of law principles notwithstanding. Venue in any dispute arising out of this Contract shall be a court of appropriate jurisdiction in El Paso County, Texas.

16.

SUCCESSORS AND ASSIGNS

Consultant shall not assign its rights under this Contract, excepting its right to payment, nor shall it delegate any of its duties without the written consent of the Owner. Subject to the provisions of the immediately preceding sentence, each party to this Contract binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

17.

ENTIRE AGREEMENT

This Contract and its Exhibits constitute the entire agreement between the parties with reference to any Project and supersede any and all prior communications, discussions, negotiations, understandings, or agreements.

Executed by the authorized representative of each party as indicated below.

18.

REPRESENTATIONS

- (A) Pursuant to Texas Government Code Section 2271.002, Consultant verifies it does not boycott Israel and will not boycott Isreal as defined in Section 2271.001(1), for the duration of the Contract. This provision is applicable if contractor employs at least 10 full-time employees and this contract has a value of at least \$100,000.
- (B) Pursuant to Texas Government Code Section 2274.002, Consultant verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not, during the term of this Contract, discriminate against a firearm entity or firearm trade association. This provision is applicable if Consultant employs at least 10 full-time employees and this contract has a value of at least \$100,000.

THE COUNTY OF EL PASO, TEXAS – OWNER

APPROVED:

Ricardo A. Samaniego
El Paso County Judge

Date _____

APPROVED AS TO CONTENT:

Director of Public Works

Date _____

APPROVED AS TO FORM:

Assistant County Attorney

Date _____

APPROVED AS TO FORM AND CONTENT:

MNK ARCHITECTS, INC.

Name, Title

Date _____