

GRANT ADMINISTRATION SERVICES

THIS AGREEMENT, MADE THIS _____ DAY OF _____, 2016 BY AND BETWEEN THE CITY OF BOERNE, hereinafter referred to as the Client, and GRANTWORKS, INC., Austin, Texas, hereinafter referred to as the Consultant, procured in conformance with Texas Government Code Chapter 2254, Subchapter A, "Professional Services"

I. SCOPE OF BASIC SERVICES

Consultant agrees to render Client grant administration services for Client's Transportation Alternatives Program (TAP) Contract Number 0915-11-033 (the "Contract"), as administered by the Texas Department of Transportation (the "Department"), as provided in the provisions titled, "Part III, Scope of Basic Services" and attached hereto and incorporated by reference herein (the "Services").

II. TIME OF PERFORMANCE

The time of services of Consultant shall commence no earlier than upon execution of this agreement. In any event, Consultant shall use commercially reasonable efforts to perform all services required and performed hereunder within either 1095 calendar days or the project's administrative closure date, as defined by Department, whichever is later.

III. COMPENSATION AND METHOD OF PAYMENT

For and in consideration of the foregoing, Client agrees to pay Consultant a base fee of Sixty-Eight Thousand and no/100 Dollars, in accordance with the following schedule. All payments are conditioned upon submission by Consultant of Invoices and receipt of grant funds by Client. Listing of specific milestones shall not be construed as a representation or warranty, and Consultant makes no representations or warranties, that these milestones measure overall contract progress facilitated by the Consultant's performance of the services, and any particular milestone will be achieved or that any specific Department or other requirements ultimately will be met. The fee schedule shall be based upon identified contract milestones, as follows:

| Scope of Work Categories | | |
|---|-------------|--------------------|
| Financial Management | 15% | \$10,200.00 |
| Project Management/LGPP | 30% | \$20,400.00 |
| Acquisition/URA Assistance | 10% | \$6,800.00 |
| Construction Period Administrative Activities | 35% | \$23,800.00 |
| Audit/Contract Close-out Assistance | 10% | \$6,800.00 |
| Contract Amount | 100% | \$68,000.00 |

The above fee includes all ancillary services that may be necessary to satisfactorily complete the above-listed scope of work categories including: ongoing document preparation, ongoing financial management of grant and local match funds, technical assistance and advice, coordination and liaison services, assistance with project modifications, real property acquisition report assistance and advice, and travel to and from the Client's location.

Invoices shall be payable to GrantWorks within 30 days after the invoice date.

IV. ADDITIONAL SERVICES

- A. If authorized by Client, the Consultant shall furnish Additional Services of the following types which are not considered normal or customary Basic Services; these will be paid for by the Client at an hourly rate of Eighty-five and no/100 Dollars (\$85.00).
- Services resulting from significant changes in general scope of project necessitating the revision of previously accepted reports, documents, and studies or requiring programmatic amendments to Client's Contract with the Department.
 - New and/or additional acquisition activities resulting from unknown needs prior to project initiation, site changes, and/or condemnation proceedings.

5. Additional services resulting from new or revised program guidelines or regulations as mandated by the state or federal administering agency during the term of this Agreement.
 6. Additional monitoring visits (other than the normal interim and final) which are conducted by the state or federal administering agencies as necessitated by actions or non-actions other than those of the Consultant.
 7. Preparing to serve, or serving, as a consultant or witness for Client in any litigation, other legal or administrative proceeding involving this project.
 8. Preparation of financial statements and records such as audits, check registers, and ledgers that are required for project implementation and are typically generated by the Client in the normal course of business.
 9. Additional or extended services made necessary by: 1) a significant amount of defective work of any construction contractor, consulting engineer and/or architect; 2) prime construction contractor utilizing more than three (3) sub-contractors; 3) more than two (2) prime construction contracts; 4) force account documentation for labor, equipment and materials valued at over \$25,000; 5) default of any construction contractor, consulting engineer and/or architect.
- B. Fees for any professional services required to carry out project-related activities that must be furnished by a third party professional including but not limited to accountant, appraiser, archaeologist, architect, attorney, auditor, biologist or other natural scientist, engineer, historic preservationist, or surveyor, shall be in addition to the base fee payable to Consultant specified in Section III. Expenditures for such services shall require prior approval by Client.

V. CHANGES AND AMENDMENTS

The Client may, from time to time, request changes in the scope of services of the consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, must be mutually agreed upon by and between the Client and the Consultant and shall be incorporated in written amendments to this Agreement. If a change is requested but the parties cannot agree on the specific terms of such change, the parties may mutually agree to terminate this Agreement. Absent such agreement to terminate, the Agreement will continue without the change.

VI. ASSIGNABILITY

Neither party shall assign any interest in this Agreement or transfer any interest in the same, without the prior written consent of the other party, not to be unreasonably withheld, provided, however, that claims for money by the Consultant from the Client 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 reasonably promptly to the Client.

VII. RECORDS AND AUDITS

During the term of this Agreement, the Consultant shall assist the Client in maintaining fiscal records and supporting documentation for all expenditures of funds made under the Contract. Such records must include data on racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under the Contract. Client shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Contract or the period required by other applicable laws and regulations.

VIII. MISCELLANEOUS PROVISIONS

- A. Governing Law. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in the county in which Client's primary office is located.
- B. Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors and permitted assigns. This Agreement does not, and is not intended to confer any rights or remedies to any person other than the parties to this Agreement.
- C. Severability. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- D. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursement in addition to any other relief to which such party may be entitled.
- E. Provision of Information. It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined in this Agreement shall be furnished to the Consultant by the Client and its agencies. No charge will be made to Consultant for such information and the Client and its agencies will cooperate with Consultant in every way possible to facilitate the performance of the work described in this Agreement.
- F. Local Program Liaison. For purposes of this Contract, the «Official Title» or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Consultant. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
- G. Waiver of Consequential Damages. Neither party will be liable to the other party or any other person or entity for any special, incidental, indirect, consequential, punitive or exemplary damages arising out of or relating to this Agreement, regardless of the form of action and whether or not such party has been informed of or otherwise might have anticipated the possibility of such damages.
- H. Limitation of Liability. Each party agrees that, regardless of the type, nature or number of causes of action or claims by the Client (including without limitation claims for indemnity under this Agreement) or any third party claiming by, through or under the Client, the maximum amount of damages, individually or in the aggregate, that either party will be liable for or can be required to pay to the other or any other claimant is the amount of fees to be paid to the Consultant by the Client under this Agreement. The parties agree that this limitation of damages is reasonable and acknowledge that but for this limitation, neither party would enter into this Agreement.
- I. Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties with regard to contemporaneous understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.
- J. Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against either party by reason of the extent to which such party or its professional advisors participated in the preparation of this Agreement.
- K. Ownership of Work and Copyright. The parties agree that the Consultant retains all ownership rights to forms, reports, and other documents produced in whole or in part under this Agreement until such documents are completed as contemplated under this Agreement and placed in the official Contract record or submitted as final documents to the Client or the Department. Consultant shall retain all ownership rights to templates, internal tracking systems, and other documents produced by Consultant that have a common use applicable to multiple clients and are not produced specifically for the Client under this Agreement. 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 the Consultant.
- L. Alternative Dispute Resolution. The parties hereto agree to resolve all disputes arising hereunder in accordance with this section. If a dispute arises out of or relates to this Agreement or any alleged breach hereof, the party desiring to resolve such dispute shall deliver a written notice of the dispute, including the specific claim in the dispute to the other party. Following the delivery of such notice, the parties involved in the dispute shall meet at least twice within the thirty (30) day period commencing with the date of the notice and in good faith shall attempt to resolve such dispute through negotiation. If any dispute is not resolved or settled by the parties as a result of such negotiation, the parties in good faith shall submit the dispute to non-binding mediation before a retired judge of a federal district court or Texas district court or a similarly qualified, mutually agreeable individual in Austin, Texas. The parties

shall bear the costs of such mediation equally. If the dispute is not resolved through such mediation, either party may proceed to file suit.

- M. **Force Majeure.** A "Force Majeure Event" means any event or cause beyond a party's reasonable control (including without limitation, construction delays, fire, flood, rain, weather, casualty, explosions, damage by third parties whether negligently or intentionally caused, strikes, work stoppages, picketing, acts of God or other casualties, or the laws or actions of any governmental authority), as a result of which at any time a party is unable to perform any of its obligations under this Agreement. If a Force Majeure Event occurs during the term of this Agreement that prevents the Consultant from performing its obligations hereunder, the Consultant and the Client will in good faith mutually agree on one of the following alternatives: (1) extend the time for performance, or (2) terminate this Agreement and, as mutually agreed, cause the payment to Consultant of fees not yet paid for services performed prior to the occurrence of the Force Majeure Event or cause the refund to Client of fees previously paid for services that were not performed prior to the occurrence of the Force Majeure Event.

IX. TERMS AND CONDITIONS

This Agreement is subject to the provisions titled "Part II Terms and Conditions" and "Part III Scope of Basic Services," which each are attached hereto and hereby are incorporated by reference.

IN WITNESSETH HEREOF, the Client and the Consultant have executed this Agreement as of the date indicated above.

GrantWorks, Inc.
2201 Northland Drive
Austin, TX 78756

City of Boerne
402 E. Blanco
Boerne, Texas 78006



BY:

Bruce J. Spitzengel
President

BY:

ATTEST:

BY:

City Secretary

**AGREEMENT FOR ADMINISTRATIVE MANAGEMENT SERVICES
PART II - TERMS AND CONDITIONS**

1. **PERSONNEL.** The Consultant represents it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Client. The Consultant may subcontract any of the work or services covered by this Agreement, provided that (a) any subcontracted work or services must be the subject of a written approval written contract or agreement, (b) the Consultant shall be responsible to Client for the acts or omissions of any such subcontractor, and (c) such subcontractors shall be subject to the requirements of the program.
2. **REPORTS AND INFORMATION.** The Consultant, at such times and in such forms as the Client may reasonably require, shall furnish the Client 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.
3. **RECORD RETENTION.** In accordance with 2 CFR 200 (formerly 24 CFR §85.36(i)(11)), Consultant shall provide to Client all records pertinent to the Contract. Client shall retain all required records for at least three (3) years after making final payments and all other pending matters are closed.
4. **ACCESS TO RECORDS.** In accordance with 2 CFR 200 (formerly 24 CFR §85.36(i)(10)), during the Agreement's time of performance the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives will have access to any books, documents, papers, and records maintained by the Consultant which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transcriptions.
3. **FINDINGS CONFIDENTIAL.** All of the reports, information, data, etc., prepared or assembled by the Consultant under this Agreement are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the Client except where required by law or by court order.
4. **COMPLIANCE WITH LOCAL LAWS; INDEMNIFICATION.** Consultant shall comply with the requirements of all applicable laws, rules and regulations, and shall, indemnify, and hold harmless the Client from and against them, and shall indemnify and hold harmless the Client from and against liability for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws associated solely with Consultant's performance of the services required to be performed by Consultant under this Agreement.
5. **TERMINATION OF AGREEMENT FOR CAUSE.** In accordance with 2 CFR 200 APPENDIX II (B) If the Consultant shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the Client shall provide written notice to Consultant reasonably specifying the failure or violation. If Consultant fails to cure such failure or violation within five (5) business days of receiving such notice or, if the failure or violation is incapable of cure within such time frame, to begin to take actions to cure such failure or violation and to diligently pursue them to completion, Client thereupon shall have the right to terminate this Agreement immediately by giving written notice to the Consultant. Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. In such event, all finished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Agreement shall, at the option of the Client, become its property.
6. **TERMINATION OF AGREEMENT FOR CONVENIENCE.** Either the Client or the Consultant may terminate this Agreement at any time by providing at least ten (10) days' notice in writing to the

other party to this Agreement. If the Agreement is terminated as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. In such event, all finished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Agreement shall, at the option of the Client, become its property.

7. **CONFLICTS OF INTEREST**

A. **Governing Body:** Client agrees that no member of its governing body, no other public official of Client, and no other officer, employee, or agent of the Client who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement, and Client shall take appropriate steps to assure compliance with this requirement.

8. **DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689).** The Consultant certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Consultant. The Consultant understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

9. **FEDERAL COMPLIANCE.** During the term of this Agreement, the parties shall comply with all Federal laws, regulations, and rules including the following:

A. **DISADVANTAGED BUSINESS ENTERPRISE.** The Consultant, its agents, employees, assigns, or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, will comply with the provisions of 49 CFR 243 as amended, which is made part of this agreement by reference.

B. **CIVIL RIGHTS ACT OF 1964.** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

C. **Section 504 Rehabilitation Act of 1973, as amended.** The Consultant agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

D. **AGE DISCRIMINATION ACT OF 1975.** The Consultant shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

E. **SECTION A109 OF THE HOUSING & COMMUNITY DEVELOPMENT ACT OF 1974.**

a. Under Title VI of the Civil Rights Act of 1964, no person shall on the ground of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.

F. **EQUAL OPPORTUNITY CLAUSE.** During the performance of this Agreement, the Consultant agrees as follows:

i. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

- The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - iii. The Consultant will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.
 - iv. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - v. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - vi. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - vii. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - viii. The Consultant will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**AGREEMENT FOR GRANT ADMINISTRATION SERVICES
PART III - SCOPE OF BASIC SERVICES**

A. Project Management/LGPP Certification

1. Provide general advice to the Client and its staff with respect to the implementation of the project and regulatory matters.
2. Maintain Local Government Policies and Procedures (LGPP) certification.
3. Furnish forms, policies, and procedures for implementation of the project.
4. Provide technical assistance to Client personnel who will be directly involved in the program for routine tasks, using the TxDOT Local Government Policies and Procedures.
5. Assist Client in developing a record keeping system consistent with program guidelines, including the establishment and maintenance of program files.
6. Serve as liaison for the Client during normal monitoring visits by staff representatives from the Texas Department of Transportation.
7. Assist Client in meeting all special condition requirements identified in the Department contract.
8. Prepare and submit to Department Client's required reports.
9. Assist Client in preparing Contract Amendments and Modifications along with related documentation, public hearings, and notices as requested by Client.*
10. Other general administration tasks not listed here that are requested by Client and agreed to in writing by Consultant.

B. Financial Management

1. Assist Client in proving its ability to manage the grant funds to the state's audit division.
2. Assist Client in establishing and maintaining a Direct Deposit account and/or separate local bank account, journals and ledgers.
3. Assist Client in submitting the Direct Deposit Authorization Form and/or Depository/Authorized Signatory form to Department.
4. Assist Client in preparation of drawdown requests from Department and disbursements of funds within the allotted time period.

C. Real Property Acquisition/URA Assistance

1. Prepare and/or review required acquisition report(s).
2. Advise Client of general procedures required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as they pertain to the project.

D. Construction Period Administration Activities

1. Assist Client in documenting compliance with all federal and state requirements related to equal employment opportunity.
2. Assist Client in documenting compliance with all federal and state requirements related to minimum wage and overtime pay requirements.
3. Provide assistance to or act as local labor standards officer for this project.
4. Select and verify wage rate with Department.
5. Request bid packet, bid advertisement, bid tabulation, and contract prepared by engineer to review upon receipt for compliance with TxDOT requirements.
6. Make ten-day call to Department.
7. Verify construction contractor and any subcontractors for eligibility.
8. Submit start of construction documents to Department.
9. Attend (conduct if necessary) pre-construction conference and prepare minutes.
10. Review weekly payrolls and conduct compliance follow-ups.
11. Submit any additional classifications to Department.
12. Coordinate employee interviews to evaluate Davis-Bacon wage compliance.
13. Request from engineer and upon receipt process and submit change orders to Department.
14. Obtain Certificate of Construction Completion/Final Wage Compliance Report and submit to Department.

E. Audit/Close-out Procedures

1. Prepare the Project Records Review Report for Local Government Contracts.
2. Assist Client in responding to any monitoring and audit findings and resolving any third party claims.
3. Provide auditor with TxDOT audit guidelines.

Additional General Terms Regarding Third-Party Services

Some services related to the completion of the project may be performed by third-party service providers.

Assistance by Consultant with (1) verification of construction contractors or other service contractors, (2) selection of bid award winners, or (3) any other activity relating to contractors, subcontractors, bid award winners or any other third party not directly engaged through a written agreement with Consultant to provide services required to be provided by Consultant under this Agreement (collectively "Third Parties") is not intended to be and shall not be construed as an endorsement, representation or warranty by Consultant of any kind relating to such Third Party Service Providers or of the quality of such Third Parties work, and all such endorsements, representations or warranties hereby are expressly disclaimed.

Assistance by Consultant with the fulfillment of any requirements imposed by Third Parties, governmental or otherwise, shall not be construed as a representation or warranty, and Consultant makes no representations or warranties, that any particular requirement will be achieved or met, and Consultant assumes no responsibility for the achievement or failure to achieve such requirements.

All assistance by Consultant described in this Agreement based on information provided by Third Parties shall be considered information provided by Client, and Consultant shall be entitled to rely on such information without any additional duty of inquiry or investigation.