

**CONTRACT FOR PROFESSIONAL MANAGEMENT SERVICES**

**PART I – AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and between the COUNTY OF UPSHUR, hereinafter called the "County", acting herein by Todd Tefteller, County Judge hereunto duly authorized, and Traylor & Associates, Inc. hereinafter called "the Contractor", acting herein by Gary R. Traylor, President.

County: Upshur County  
P.O. Box 730  
Gilmer, Texas 75644

Contractor: Traylor & Associates, Inc.  
P. O. Box 7035  
Tyler, Texas 75711

Project: Infrastructure Improvements  
.2020 Texas Department of Transportation (TxDOT)  
Transportation Infrastructure Fund (TIF)

FILED  
TERRI ROSS  
COUNTY CLERK  
2020 JUL 15 AM 11:12  
UPSHUR COUNTY, TX.  
BY \_\_\_\_\_  
DEPUTY

**WITNESSETH THAT:**

WHEREAS, the County desires to implement an infrastructure improvements project under the general direction of the Texas Department of Transportation (hereinafter called "TxDOT") and whereas the County desires to engage Traylor & Associates, Inc. to render certain services in connection with its TxDOT project.

NOW THEREFORE, the parties do mutually agree as follows:


1. Scope of Services  
Part II, Scope of Services, is hereby incorporated by reference into this Agreement.
2. Time of Performance - The services of the Contractor shall commence on the day following the execution of this contract. In any event, all of the services required and performed hereunder shall be completed no later than the time stipulated in the written contract between the County and TXDOT.
3. Local Program Liaison - For purposes of this Contract, the County Judge or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

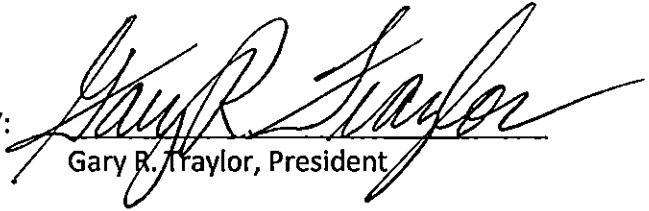
4. Access to Information - It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to TXDOT by the County and its agencies. No charge will be made to TXDOT for such information and the County and its agencies will cooperate with TXDOT in every way possible to facilitate the performance of the work described in the Agreement.
5. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **Twenty-three Thousand Eight Hundred Twenty-five and No/100 Dollars (\$23,825.00)**. Payment to the Contractor shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement, which is hereby incorporated by reference into this Agreement.
6. Indemnification – The Contractor shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the County and its agency members from and against them, and shall assume full responsibility for payments of Federal, State and local taxes-on contributions imposed or required under the Social Security, workers compensation and income tax laws.
7. Miscellaneous Provisions
  - a. 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 Upshur County, Texas.
  - b. This Agreement shall be binding upon and insure to the benefit of the parties hereto and heir respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
  - c. If 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. All other terms hereof shall remain in full force and effect.
  - d. 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 attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
  - e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.
8. Terms and Conditions - This Agreement is subject to the provisions titled, "Part IV Terms and Conditions" and attached hereto and incorporated by reference herein.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

UPSHUR COUNTY

TRAYLOR & ASSOCIATES, INC.

BY:   
\_\_\_\_\_  
Todd Tefteller, County Judge  
7-15-2020

BY:   
\_\_\_\_\_  
Gary R. Traylor, President

**NOTE: This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification.**

**PART II**  
**PROFESSIONAL MANAGEMENT SCOPE OF SERVICES**

The Firm shall provide the following scope of services:

1. Application Preparation Assistance

- a. Read, review and scrutinize grant opportunities that reflect the County's mission and objectives, identify the application requirements, and provide feedback for a Go/No Go decision by County staff.
- b. Assist the County in establishing a grant submittal project plan that identifies actions, milestones, and responsible parties in a manner that best meets the County's timeframe to complete grant applications.
- c. Coordinate with all the stakeholders and parties involved in obtaining documentation, and information that is required by grants or in support of the grant efforts.
- d. Bring our firm's knowledge, skills and experience of lessons learned to write, review, and apply quality assurance reviews to strengthen applications.
- e. Assist the County and lead the effort to complete applications, develop cost estimates, ensure forms are completed, and perform quality assurance reviews to confirm the County's grant applications meet all requirements.
- f. Take an active role in communicating with Van Zandt County leadership, the State or Federal funding agency, to answer any questions including post-submission questions and requests for additional information.
- g. Submit grant applications application through the various means and portals as required.

2. Services to be Performed

- a. Assist with County-performed design and construction documentation.
- b. Assist with preparation of material and/or construction bid notices.
- c. Create bid documents and assist in procurement of construction services, materials, rental/lease equipment, professional design services or other items needed to implement the TIF projects. This may include multiple bids for contracted work for various projects.
- d. Assist with preparation of construction and/or material contracts.
- e. Coordinate HUB program requirements.
- f. Complete any necessary project environmental review activities. Note: If the review determines that services of an archaeologist, historic preservation architect, or other specialist are required for any project, such activities would be separately procured by County and not covered by this RFP.
- g. Complete any necessary project acquisition activities in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Texas Landowners Bill of Rights (Texas Government Code Sec. 402.031 and Chapter 21 of the Texas Property Code.)

- h. Review TxDOT contracts and related requirements to develop implementation guide and policies for County's participation in the TIF.
- i. Provide labor standards compliance for all contracted work in conformance with Texas Government Code Title 10, Chapter 2258, including on-site employee interviews, review of all contractor payrolls, wage determination, calculation of wage restitution, etc.
- j. Assist with documentation of any project related force account (county crew and equipment) hours and costs. This requires on-site meetings with county commissioners and their staff, and access to Rental Rate Blue Book for equipment
- k. Assist in compilation of data for county owned equipment used for each project if applicable.
- l. Review of all contractor or materials invoices for compliance with TxDOT and local financial reporting requirements.
- m. Assist in preparing TxDOT Billing Summaries, Individual Project Billing Summaries with supporting documentation, and Invoices for reimbursement requests and in determining eligibility of costs for reimbursement.
- n. Assist in preparing TxDOT Certifications and back-up documents related to individual projects for signature by local officials.
- o. Assist with and provide guidance regarding quality assurance documentation for conformance with the County's Design Criteria and Specifications. This may require on-site visits during construction.
- p. Provide periodic reports for Commissioners Court regarding each project's status.
- q. Coordinate with the County's financial officers and staff on project specific cost accounting and tracking.
- r. Prepare summary of allowable costs and amounts reimbursed from the fund in compliance with Title 43, Texas Administrative Code, Subchapter 0 and the Texas Uniform Grant Management Standards for each project.
- s. Assist in preparation of amendments to TxDOT Agreement and revisions to List of Transportation Infrastructure projects, as needed.
- t. Other Program Management Services as may be required by TxDOT.

**PART III  
PAYMENT SCHEDULE  
PROFESSIONAL MANAGEMENT SERVICES**

County shall reimburse Traylor & Associates, Inc. for management services provided for completion of the following project milestones per the following percentages of the maximum contract amount:

<u>Milestone</u>	<u>% of Contract Fee</u>
• Establishment of recordkeeping system	20%
• Certification Form 2	20%
• Completion of the bid/contract award process	20%
• Construction completion	20%
• Certification Form 3	20%
Total	100%

**NOTE:** Percentages of payment listed here are guidelines based on management services typically provided. The payment schedule should be tied directly to the actual Scope of Work identified in Part II – Administrative Scope of Services. Cities may also opt to reimburse Professional Services Contracts on an hourly basis.

**PART IV**  
**TERMS AND CONDITIONS**

1. Termination for Cause. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the County, be turned over to the County and become the property of the County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor, and the County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

2. Termination for Convenience of the County. The County may at any time and for any reason terminate The Contractor's services and work at the County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, The Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, the Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by the Contractor as are permitted by the prime contract and approved by County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to the Contractor prior to the date of the termination of this Agreement. The Contractor shall not be entitled to any claim or claim of lien against County for any additional compensation or damages in the event of such termination and payment.

3. Changes. The County may, from time to time, request changes in the services the Contractor will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TXDOT program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute

or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. [This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.] If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. Personnel.

- a. The Contractor represents that he/she/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 County.
- b. All of the services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under 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 County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability. The Contractor 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 County thereto; Provided, however, that claims for money by the Contractor from the County 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 to the County.

7. Reports and Information. The Contractor, at such times and in such forms as the County may require, shall furnish the County 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.

8. Records and Audits. The Contractor shall insure that the County maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. County shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Contractor under this contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the County.



10. 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 the Contractor.
11. Compliance with Local Laws. The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
  - a. Governing Body. No member of the governing body of the County and no other officer, employee, or agent of the County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of the award between TXDOT and the County shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
  - b. Other Local Public Officials. No other public official who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the award between TXDOT and the County shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
  - c. Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the award between TXDOT and the County or this Agreement. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the award between TXDOT and the County or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Debarment and Suspension (Executive Orders 12549 and 12689). The Contractor 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 Contractor. The Contractor 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."

**Federal Civil Rights Compliance.**

During the performance of this contract, the Contractor agrees as follows:


14. Equal Opportunity Clause (applicable to contracts and subcontracts over \$10,000).
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor 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 Contractor 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.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor 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 contractor's legal duty to furnish information.
- d. The Contractor 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 Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor 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.
- f. The Contractor 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.
- g. In the event of the Contractor'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 Contractor 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.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) 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 Contractor 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or

vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
  
16. Section 109 of the Housing and Community Development Act of 1974. The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, 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.
  
17. Section 504 Rehabilitation Act of 1973, as amended. The Contractor 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.
  
18. Age Discrimination Act of 1975. The Contractor 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.

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