

## **PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT FOR PROFESSIONAL SERVICES is made by and between the **NUECES COUNTY** and **P&M Commercial Operations, LLC**, hereinafter called "Contractor" for the purpose of contracting for professional services.

### **WITNESSETH**

**WHEREAS**, Local Government Code, Chapter 262.024, provides for the procurement of professional services; and

**WHEREAS**, construction management applies effective management techniques to the planning, design, and construction of a project to control time, cost and quality; and

**WHEREAS**, Texas Attorney General in opinion JM-940 recognized construction management services as a professional service; and

**WHEREAS**, the County desires to contract for professional services described as follows:

Construction management services related to construction of Nueces County IB Magee RV Park Improvements, specifically IFB No. 3112-19.

**NOW, THEREFORE**, the Nueces County and the Contractor, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows:

### **AGREEMENT**

#### **ARTICLE 1 SCOPE OF SERVICES TO BE PROVIDED BY NUECES COUNTY BOARD AND CONTRACTOR**

Nueces County hereby agrees to perform those tasks and services described in Attachment A, which is attached hereto and made a part thereof this contract.

Contractor hereby agrees to perform those tasks and services described in Attachment B, which is attached hereto and made part thereof of this contract.

#### **ARTICLE 2 CONTRACT PERIOD**

This contract shall terminate at the close of business on May 31, 2020, unless extended by supplement agreement duly executed by the Contractor and the Nueces County prior to the date of termination, as provided in Article 9 – Supplemental Agreements, or otherwise terminated, as provided in Article 16 – Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement. The contract shall begin on November 21, 2019.

**ARTICLE 3  
COMPENSATION AND METHOD OF PAYMENT**

The maximum amount payable under this contract is \$65,250.00, unless modified as provided in Article 9 – Supplemental Agreements. This amount shall be due and payable upon completion of respective tasks in accordance with Attachment C, Work and Fee Schedule, herein attached and incorporated in its entirety. There will be no fees for travel.

The Contractor shall prepare and submit monthly invoices and a progress report stating the status and description of the work accomplished during the billing period to Scott Cross, Director, Nueces County Coastal Parks System.

Nueces County reserves the right to withhold payment pending verification of satisfactory work.

**Nueces County assumes no liability for work performed or costs incurred prior to the effective date of this agreement during periods when work is suspended, or subsequent to the contract completion date.**

**ARTICLE 4  
WORK AUTHORIZATIONS**

Nueces County will issue work authorizations, in the form identified and attached hereto as Attachment D – Work Authorization, to authorize the Contractor to perform one or more tasks. The work authorization will not waive the Nueces County’s or Contractor’s responsibilities and obligations established in this contract. The Contractor’s work authorization will be issued by the Nueces County Coastal Parks Director.

Work included in a work authorization shall not begin until the Nueces County and the Contractor have signed the work authorization. All work must be completed on or before the completion date specified in the work authorization. The Contractor shall promptly notify Nueces County of any event which will affect completion of the work authorization.

**ARTICLE 5  
PROGRESS**

The Contractor shall, from time to time during the progress of the work, confer with Nueces County. The Contractor shall prepare and present such information as may be pertinent and necessary, or as may be requested by Nueces County, in order to evaluate features of the work. Upon request by Nueces County, the Contractor shall make presentations to Nueces County Commissioners Court.

At the request of Nueces County or the Contractor, conferences shall be held at the Contractor's office, Nueces County offices, or at other locations designated by Nueces County. These conferences shall also include an evaluation of the Contractor's services and work when requested by Nueces County.

The Contractor shall promptly advise Nueces County in writing of events which have a significant impact upon the progress of work, including:

- (1) problems, delays, or adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by a statement of the action taken, or contemplated, and any Nueces County Board of Park Commissioners assistance needed to resolve the situation; and
- (2) favorable developments or events which would enable meeting the work schedule goals sooner than anticipated.

## **ARTICLE 6 SUSPENSION**

Nueces County may suspend the work, but not terminate the contract, by giving written notice a minimum of two (2) calendar days prior to the date of suspension. The two (2) day notice may be waived if approved in writing by both parties.

The work will be reinstated and resumed in full force and effect within ten (10) calendar days of receipt of written notice from Nueces County to resume the work. The ten (10) day notice may be waived if approved in writing by both parties.

If Nueces County suspends the work, the contract period, as determined in Article 2 – Contract Period, is not affected and the contract will terminate on the date specified unless the contract is amended as provided in Article 9 – Supplemental Agreements.

## **ARTICLE 7 ADDITIONAL WORK**

If the Contractor determines that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify Nueces County in writing. In the event Nueces County determines that such work constitutes extra work and exceeds the maximum amount payable, Nueces County shall so advise the Contractor and a supplemental agreement may be executed, as provided in Article 9 – Supplemental Agreements.

The Contractor shall not perform any additional work or incur any additional costs prior to the execution, by all parties, of a supplemental agreement. Nueces County shall not be responsible for actions by the Contractor or any costs incurred by the Contractor relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

**ARTICLE 8  
CHANGES IN WORK**

If Nueces County finds it necessary to request changes to previously satisfactorily completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Contractor shall make such revisions if requested and as directed by Nueces County. This will be considered additional work and paid for as specified under Article 7 – Additional Work.

**ARTICLE 9  
SUPPLEMENTAL AGREEMENTS**

The terms of this contract may be modified by supplemental agreement if Nueces determines that there has been a significant change in the scope, complexity, or character of the service to be performed, or the duration of the work. Additional compensation, if appropriate, shall be identified as provided in Article 3 – Compensation and Method of Payment.

Any supplemental agreement must be executed by both parties within the contract period specified in Article 2 – Contract Period.

**No claim for extra work done shall be made by the Contractor until full execution of the supplemental agreement and authorization to proceed is issued by Nueces County. Nueces County reserves the right to withhold payment pending verification of satisfactory work performed.**

**ARTICLE 10  
PUBLIC INFORMATION ACT**

All data, and other documents created or collected under the terms of this contract are the exclusive property of the Nueces County Board of Park Commissioners and shall be furnished to Nueces County upon request. All documents prepared by the Contractor and all documents furnished to the Contractor by Nueces County shall be delivered to Nueces County upon completion or termination of this contract. The Contractor, at his own expense, may retain copies of such documents or any other data which he has furnished Nueces County under this contract. Release of information will be in accordance with the Texas Public Information Act.

**ARTICLE 11  
SUBCONTRACTING**

The Contractor shall not assign, subcontract or transfer any portion of the work under this contract. All work under this contract shall be performed by Contractor, unless approved in writing by Nueces County.

**ARTICLE 12  
EVALUATION OF WORK**

Nueces County and its authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed or being performed hereunder. If a review or evaluation is being made on the premises of the Contractor, the Contractor shall provide all reasonable facilities and assistance for the safety and convenience of Nueces County's representatives in the performance of their duties. If funds by other agencies or entities are to be used for payment of the services under this contract, the Contractor's services and work may be subject to periodic review and approval by other agencies or entities, including city, county, state, and/or federal agencies.

**ARTICLE 13  
SUBMISSION OF REPORTS**

All applicable reports shall be submitted in preliminary form for review by Nueces County Board before a final report is issued. Nueces County comments on the Contractor's preliminary report shall be addressed in the final report.

**ARTICLE 14  
COMPUTER DOCUMENTS AND INFORMATION EXCHANGE**

All computer files must be Microsoft Office compatible or PDF format.

All graphics media provided by the Contractor shall be delivered to Nueces.

**ARTICLE 15  
VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT**

Violation of the contract terms or breach of contract by the Contractor shall be grounds for termination of the contract and any increased cost arising from the Contractor's default, breach of contract, or violation of contract terms shall be paid by the Contractor. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

**ARTICLE 16  
TERMINATION**

This contract shall terminate at the close of business on May 31, 2020 unless extended as provided in Article 9 – Supplemental Agreements.

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing, of both parties;
2. By Nueces County, by notice in writing to the Contractor as a consequence of failure by the Contractor to perform the services set forth herein in a satisfactory manner;
3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein;
4. By Nueces County, for reasons of its own and not subject to the mutual consent of the Contractor upon not less than thirty (30) calendar days written notice to the Contractor; and
5. By written notice from Nueces County Board upon satisfactory completion of all services and obligations described herein.

Should Nueces County terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Contractor. In determining the value of the work performed by the Contractor prior to termination Nueces County shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should Nueces County terminate this contract under Item 4 of the above paragraph, the amount charged during the thirty (30) calendar day notice period shall not exceed the amount charged during the preceding thirty (30) calendar days.

If the Contractor defaults in the performance of this contract or if Nueces County terminate this contract for fault on the part of the Contractor, Nueces County will give consideration to the actual costs incurred by the Contractor in performing the work to the date of default, the amount of work which was satisfactorily completed to the date of default, the value of the work which is usable to Nueces County, the cost to Nueces County of employing another to complete the work required and the time required to do so, and other factors which affect the value to Nueces County of the work performed at the time of default.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of Nueces County and the Contractor under this contract except the obligations set forth in Articles 10, 12, 17, 18, 19, and 20 of this contract. If the termination of this contract is due to the failure of the Contractor to fulfill his contract obligations, Nueces County may take over the project and prosecute the work to completion.

## **ARTICLE 17 COMPLIANCE WITH LAWS**

The Contractor shall comply with all applicable Federal, State, and local laws, statutes, codes, ordinances, rules, and regulations, and the orders and decrees of any court, or administrative bodies or tribunals, in any manner affecting the performance of this contract, including, without limitation, licensing laws and regulations. When required, the Contractor shall furnish Nueces County with satisfactory proof of his compliance.

It is expressly understood by Nueces County and the Contractor, that from the date of award of Contractor to one year after termination or expiration of contract term, it is prohibited for any county official or employee thereof, to receive gifts described by section 5.02 of the County Personnel or Civil Service Rules, and/or campaign or political contributions regardless of amount from Contractor or principal owners of said Contractor. County official is defined as those individuals described as county and precinct officers in subchapter b of Chapter 152 of the Texas Local Government Code. Contractor is furthermore prohibited from making political campaign or personal contributions to candidates for county and precinct office from the date of award of Contractor to one year after termination or expiration of contract term. It is also prohibited for Contractor to contribute to employee associations or for the benefit of groups of employees.

## **ARTICLE 18 INDEMNIFICATION**

**THE CONTRACTOR SHALL SAVE HARMLESS NUECES COUNTY, TEXAS AND ITS OFFICERS AND EMPLOYEES FROM CLAIMS AND LIABILITY DUE TO ACTIVITIES OF ITSELF, WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE CONTRACTOR. THE CONTRACTOR SHALL ALSO SAVE HARMLESS NUECES COUNTY, TEXAS FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY NUECES COUNTY, TEXAS IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON NUECES COUNTY, TEXAS AS A RESULT OF SUCH ERROR, OMISSION, OR NEGLIGENT ACTIVITY BY THE CONTRACTOR.**

## **ARTICLE 19 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall be responsible for the accuracy of his work and shall promptly make necessary revisions or corrections resulting from his errors, omissions, or negligent acts without compensation. The service provided is for the sole benefit of the County and in no way relieves the design firm or contractor from providing a complete work in place compliant with all local ordinances, codes, laws. The providing of the service does not control means or methods for executing the work and is not responsible for noncompliant work.

## **ARTICLE 20 RETENTION, AVAILABILITY OF RECORDS AND AUDIT REQUIREMENTS**

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at his office during the contract period and for four (4) years from the date of final payment under this contract or until pending litigation has been completely and fully resolved, whichever occurs last. Nueces County or any of its duly authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the Contractor which are directly pertinent to this

contract for the purpose of making audits, examinations, excerpts, transcriptions, and for checking the amount of work performed by the Contractor.

**ARTICLE 21  
SUCCESSORS AND ASSIGNS**

The Contractor and Nueces County do hereby bind themselves, their successors, executors, administrators, and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

The Contractor shall not assign, subcontract, or transfer his interest in this contract without the prior written consent of Nueces County.

**ARTICLE 22  
SEVERABILITY**

In the event any one or more of the provisions contained in this contract, for any reason, shall 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 contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 23  
PRIOR CONTRACT SUPERSEDED**

This contract constitutes the sole agreement of the parties hereto and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

**ARTICLE 24  
NON-COMPETE**

This paragraph was specifically deleted.

**ARTICLE 25  
INSURANCE**

The Contractor shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

1. Texas Business Automobile Policy, endorsed with Nueces County as an additional insured and endorsed with a waiver of subrogation in favor of Nueces County, in limits of liability not less than two hundred fifty thousand dollars (\$250,000) each person for bodily injury, five hundred thousand dollars (\$500,000) each occurrence for bodily

injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.

Only those vehicles that are insured under the Certificate of Insurance are permitted on the job site(s). The work shall not be commenced by Contractor until after policy, or policies evidencing the insurance coverage herein required, or certificates of such insurance, providing that the insurer shall give Nueces County thirty (30) days written notice prior to cancellation, material revision or intention not to renew, have been submitted to Nueces County. In the event the Insurer refuses to provide Nueces County with notice as detailed, the Contractor agrees to provide notice in writing immediately, and shall suspend all work until insurance is restored and proof, in a form acceptable to Nueces County, is provided.

The Contractor, at his/her expense, shall purchase and maintain in force at all times during the term of this Contract the insurance with limits not less than indicated above. The Contractor will be considered in breach of contract should the Contractor fail to maintain the required insurance coverage during the contract period of this contract. The termination of this contract resulting from failure to maintain the required insurance will be carried out in accordance with Article 16-Termination.

**ARTICLE 26**  
**WAIVER OF LIABILITY/ASSUMPTION OF RISKS**

**Contractor hereby waives and agree to waive, any claim and/or cause of action that he/she may now have or may have in the future, whether known or unknown, against Nueces County and the Nueces County Board of Park Commissioners, its officers, employees, agents and members of its governing body (collectively, the “County Parties”), for property damage, personal injury (including but not limited to bodily injury, mental distress, physical or mental impairment), or death, or any loss or harm of any kind (collectively, “Damages”) that Contractor may sustain as a result of or in connection with Contractor’s activities pursuant to this Agreement, including the use of any motor vehicles on public or private streets or County property. THIS WAIVER APPLIES EVEN WHEN THE DAMAGES RESULT FROM THE NEGLIGENCE OF ANY OR ALL OF THE COUNTY PARTIES.**

**ARTICLE 27**  
**RELEASE**

**Contractor does hereby release the County Parties, individually and in the aggregate, from any liability or responsibility for Damages, arising out of or in connection with activities pursuant to this Agreement and Contractor further agrees to never pursue any cause of action, claim, or lawsuit that he/she may otherwise be entitled to pursue against the County Parties or any of them for Damages arising from our connected with Contractor’s activities pursuant to this Agreement. THIS RELEASE APPLIES EVEN WHEN THE DAMAGES RESULT FROM THE NEGLIGENCE OF ANY OR ALL OF THE COUNTY PARTIES.**

**ARTICLE 25**

**NOTICES**

All notices to either party by the other, required under this contract, shall be personally delivered or mailed to such party at the following respective address:

**NUECES COUNTY**

Scott Cross  
Director  
Nueces County Coastal Parks  
P.O. Box 18608  
Corpus Christi, Texas 78480

**CONTRACTOR**

Scott Meares, CCM  
P&M Commercial Operation, LLC  
P.O. Box 2362  
Corpus Christi, TX 78403

**ARTICLE 25  
VENUE AND GOVERNING LAW**

Venue shall be in Nueces County. This Agreement shall be construed under and in accord with the law of the State of Texas.

**IN WITNESS WHEREOF, effective November 21, 2019.**

**Nueces County**

By: \_\_\_\_\_  
**Barbara Canales, County Judge**

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
**Kara Sands, County Clerk**

**CONTRACTOR:**

By: \_\_\_\_\_  
Scott Meares, CCM

Date: \_\_\_\_\_

**List of Attachments:**

**Attachment A – Services to be provided by Nueces County**

**Attachment B – Services to be provided by Contractor**

**Attachment C - Work and Fee Schedule**

**Attachment D – Work Authorization**

**ATTACHMENT A - Services to be provided by**  
**Nueces County**

- Provide overall project direction and day-to-day coordination/clarification about the Nueces County goals and objectives of activities associated with construction of Nueces County IM Magee RV parks.
- Provide timely decisions and responses as required when requested by Contractor.
- Provide detailed plans and specifications for review and familiarization where applicable.
- Provide copies of all Nueces County generated daily project reports, inspection reports, or any reports specific to the work contemplated in the contract documents.
- Provide copies of all testing reports.

**ATTACHMENT B - Services to be provided by Contractor**

1. Monitor Project Schedule. Review the construction planned schedule and compare it to the actual construction progress to ensure construction is on schedule and is being executed timely. Report any concerns to Nueces County.
2. Attend Project Progress Meetings.
3. Provide weekly summary update report.
4. Monitor submittal process.
5. Monitor Request for Information process.
6. Review and make recommendation on payment of Contractor Payment Applications.
7. Change Order Management process.
8. Coordinate Owner provided items for contractor installation.
9. Attend Punch List preparation.
10. Provide updates to Commissioners Court as requested.
11. Provide updates to Nueces County Coastal Parks Board as requested.

ATTACHMENT C

Work and Fee Schedule

The Nueces County, via approval of the Nueces County Commissioners Court, shall compensate the Contractor for services provided on a monthly basis, up to the maximum contract amount.

\$ 225.00 / Hr.

Up to 48.33 hours a month

Maximum Total Compensation: \$ 10,875.00 per month

**COMPLETION DATE: May 31, 2019**

## WORK AUTHORIZATION

This work authorization is issued in accordance with the Professional Services Contract dated \_\_\_\_\_, 2019, between Nueces County and P&M Commercial Operations, LLC.

**Work Task:**

Items as described on Attachment B of Professional Services Contract.

Cost: Up to \$65,250

Deliverables: As described on Attachment B of Professional Services Contract.

Completion date: \_\_\_\_\_

**NUECES COUNTY**

**P&M Commercial Operations, LLC**

By: \_\_\_\_\_  
Director, Coastal Parks

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_