



Professional Services Agreement

THE STATE OF TEXAS)

DALLAS COUNTY OF TEXAS)

This contract is made and entered into by and between the CITY OF COPPELL, a home rule municipal corporation, of Dallas County, Texas, (hereinafter referred to as "CITY") and Holmes Murphy and Associates having a principal place of business at 12712 Park Central Drive, Suite 100 Dallas, TX 75251, (hereinafter referred to as "CONTRACTOR").

1. PURPOSE

The purpose of this Contract is to state the terms and conditions under which CONTRACTOR shall provide Employee Benefit Consultant Services.

2. DESCRIPTION OF SERVICES

CONTRACTOR'S services hereunder shall include, but shall not be limited to, the following:

- A. CONTRACTOR shall perform all the services as set forth and agreed to by the CITY attached hereto as Exhibit "A" and "B" inclusive of agreed to Contractor's fees for Required Services, both of which are made a part of this Contract for all purposes; should there be any future conflict between the terms of the Required Services and rates for the Required Services as provided by the Contractor, the agreed to terms of this Contract shall be final and binding.
- B. CONTRACTOR shall work closely with the Director of Administration/Human Resources or his/her designee (hereinafter referred to as "City Staff" and appropriate CITY officials) and perform any and all related tasks required by City Staff in order to fulfill the purposes of this Contract.
- C. CONTRACTOR shall deliver all data, reports and documents which result from its services to City Staff in such form as is satisfactory to the City Staff.
- D. CONTRACTOR shall work through the appropriate City Staff to obtain all pricing and proposals by means that comply with State and Federal Laws.

3. PERFORMANCE OF SERVICES

CONTRACTOR and its employees or associates shall perform all the services under the Contract. CONTRACTOR agrees to assign David Gibson as their primary representative for providing services as set out in this contract and represent that all its other employees or associates who perform services under the Contract shall be fully qualified and competent to perform the service described in Section 2.

4. TERM

The term of this Contract shall begin on November 1, 2017 and shall be considered for renewal on November 1st of each subsequent year subject to City Staff recommendation and City Council approval. CONTRACTOR understands and agrees that time is of the essence. All services, written reports, and other data are to be completed and delivered to CITY by agreed upon dates and times within the contract period unless an extension of time, based upon good reasons presented by CONTRACTOR, is approved by City Staff.

5. PAYMENT FOR SERVICES

In consideration of the professional services to be performed by CONTRACTOR under the terms of the Contract, CITY shall pay CONTRACTOR for services actually performed as set out in the Compensation Section (IX) option 1 of the Scope of Services as defined in Exhibit "A" unless other conditions necessitate additional services, which must be authorized in advance by the City Manager or designee. CONTRACTOR'S charges for its services are not to exceed similar charges of CONTRACTOR for comparable services to other customers. Payments to CONTRACTOR shall be in the amount shown by the billings and other documentation submitted and shall be subject to City Staff's approval. All services shall be performed to the satisfaction of City Staff, and CITY shall not be liable for any payment under this Contract for services which are unsatisfactory and which have not been approved by City Staff.

6. CHANGE IN SERVICES

CITY through its City Staff may request, from time to time, changes in the scope or focus of the activities and services conducted or to be conducted by CONTRACTOR pursuant to the Contract. Any such change which varies significantly from the scope of services set out in Section 2 and would entail a significant increase in cost or expense to CONTRACTOR shall be mutually agreed on by CONTRACTOR and the City Staff. Changes in the scope, which in the opinion of CONTRACTOR and the City Staff would require additional funding by CITY, must first be authorized in advance by the City Manager, his designee and/or City Council (if applicable).

7. CONFIDENTIAL WORK

No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by or assembled by CONTRACTOR under this Contract shall be disclosed or made available to any individual or organization by CONTRACTOR without the express prior written approval of the City Manager.

8. OWNERSHIP OF DOCUMENTS

Upon acceptance or approval by CITY, all reports, information and other data, given to, prepared or assembled by CONTRACTOR UNDER THIS Contract, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY upon request or at the termination of this professional services agreement. CONTRACTOR may make copies of any and all documents for its files.

9. CONTRACTOR'S LIABILITY

Approval of CITY shall not constitute nor be deemed a release of the responsibility and liability of CONTRACTOR, its employees, agents or associates for the accuracy and competency for their designs, reports, information, and other documents or services nor shall approval be deemed to be the assumption of such responsibility by CITY for any defect, error or omission in the documents prepared by CONTRACTOR, its employees, agents or associates.

10. INDEMNITY

CONTRACTOR shall defend, indemnify, and hold CITY whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by or from any negligent act, error or omission of CONTRACTOR or any agent, servant, or employee of CONTRACTOR in the execution or performance of this Contractual Agreement.

11. INSURANCE

A. CONTRACTOR shall during the term hereof maintain in full force and effect the following insurance:

(i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the CONSULTANT's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate for injury to persons (including death), and for property damage;

(ii) A policy of automobile liability insurance covering any vehicles owned and/or operated by CONSULTANT, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;

(iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of CONSULTANT's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and

(iv) Professional Liability/Errors and Omissions coverage covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00.

B. All insurance and certificate(s) of insurance shall contain the following provisions: (1) name CITY as additional insured as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability/Errors and Omissions coverage; and (2) provide for at least thirty (30) days prior written notice to CITY for cancellation or non-renewal of the insurance; (3) provide for a waiver of subrogation against CITY for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability/Errors and Omissions coverage. CONSULTANT shall provide written notice to CITY of any material change of or to the insurance required herein.

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

D. A certificate of insurance evidencing the required insurance and all endorsements shall be submitted prior to commencement of services.

12. RIGHT OF REVIEW

CITY may review any and all of the services performed by CONTRACTOR under this Contract.

13. The following shall be conditions of, and a part of, the consideration of this Contract, to-wit:

CONFLICT OF INTEREST OF CITY EMPLOYEES

No officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof may be subject to removal from his office or position. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager.

CONFLICT OF INTEREST OF CONTRACTOR

Contractor shall not accept other employment or engage in outside activities incompatible with the proper discharge of his duties and responsibilities with the City, or which might impair his independent judgement in the performance of his duty to the City nor personally provide services for compensation, directly or indirectly, to a person or organization who is requesting an approval, investigation or determination from the City.

14. NONDISCRIMINATION

As a condition of this Contract, CONTRACTOR covenants that CONTRACTOR will take all necessary actions to insure that, in connection with any work under this Contract, CONTRACTOR, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, CONTRACTOR shall keep, retain and safeguard all records relating to the Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

15. CONTRACT PERSONAL

The Contract provides for personal or professional services, and the CONTRACTOR shall not assign the Contract, in whole or in part, without the prior written consent of CITY.

16. TERMINATION

CITY may terminate this Contract upon **Thirty (30)** days written notice to CONTRACTOR with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. CONTRACTOR shall invoice for all services completed and shall be compensated in accordance with the terms of this Contract for all such services performed by CONTRACTOR prior to the date specified in such notice.

17. NOTICES

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, or delivered electronically at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for CITY, to:

Vivyon V. Bowman (vbowman@coppelltx.gov)
Director of Administration/Human Resources
City of Coppell
255 Parkway Blvd.
Coppell, TX 75019

If intended for CONTRACTOR, to:

Holmes Murphy and Associates
12712 Park Central Drive, Suite 100
Dallas, TX 75251
ATTN: David Gibson

17. INDEPENDENT CONTRACTOR

In performing services under this Contract, CONTRACTOR is performing services of the type performed prior to this Contract, and CITY and CONTRACTOR by the execution of this Contract do not change the independent status of CONTRACTOR. No term or provision of this Contract shall be construed as making CONTRACTOR the agent, servant, or employee of CITY.

18. VENUE

The obligations of the parties to this Contract are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Dallas County, Texas.

19. APPLICABLE LAWS

This Contract is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable State and Federal laws.

20. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

21. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract 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 Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

22. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

23. CAPTIONS

The captions to the various clause of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

24. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Contract, their assigns.

25. ENTIRE AGREEMENT

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Contract, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

EXECUTED this 1st day of November, 2017, by the CITY, signing by its City and by CONTRACTOR.

BY _____
Mike Land
City Manager, City of Coppell

CONTRACTOR:
Holmes Murphy and Associates

BY _____
Dennis Bishop
President