

# INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL PROJECTS MANAGEMENT SERVICES

by and between

TOWN OF ANTHONY, TEXAS

and

MARK RAY

This Independent Contractor Agreement For Professional Projects Management Services (this "Agreement") is made effective as of the 09 day of October, 2023, by and between the Town of Anthony, Texas (the "Recipient"), of 401 Wildcat Dr., P.O. Box 1269, Anthony, Texas 79821, and Mark Ray (the "Contractor"), of 544-2 Mesilla View Dr., Chaparral, New Mexico 88081. In this Agreement, the party who is contracting to receive the services shall be referred to as "Recipient", and the party who will be providing the services shall be referred to as "Contractor."

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND STIPULATIONS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. DESCRIPTION OF SERVICES.** Beginning on October 9, 2023, the Contractor will provide the following services (collectively, the "Services"):

Professional Projects Management:

Contractor agrees to complete and provide the following deliverables on a per project basis for the Recipient:

1. **Project Repository** – Holds information like stakeholder list, budget, location of project, timeline, resources assigned and emails and phone numbers for the assigned contacts.
2. **Project Charter** – Contract stipulating the timeline, budget, stakeholders, and deliverables for each project.
3. **Project Kickoff Deck** – Presentation prepared to officially kick off the start of each project. Details scope, timeline, and budget as well as goals, success factors, key expected outputs and next steps.
4. **Project Plan Overview** – Spreadsheet document illustrating high-level timeline and deliverables to complete within that timeline.
5. **Detailed Project Plan** – Plan detailing work breakdown structure, dependencies and assigned resources.
6. **Project Status Report** – Presentation that defines the current status of the project (Green, Yellow, Red), accomplishments and action items per week, and project deliverables completed.
7. **Project Expense Tracker** – Keeps an accurate record of all project expenses and calculates remaining project budget.
8. **Contractor and Vendor Cost by Project** – Spreadsheet tracking vendor/contractor rates, labor hours, cost, and remaining budget as well as cost per month, quarter and year for all projects.
9. **Risks, Issues, Decisions, Actions and Changes (RIDAC) Log** – Tracks each risk, issue, decision, action item and change for each project. Assigns accountability and timeline to resolution as well as a mitigation plan for each.

**2. PAYMENT FOR SERVICES.** The Recipient will pay compensation to the Contractor for the Services. Payments will be made as follows:

Payment of \$2,000.00 per project due upon completion and submission to the Recipient of all of the deliverables set out in Paragraph 1 above.

No other fees and/or expenses will be paid to the Contractor, unless such fees and/or expenses have been approved in advance by the appropriate authorized executive on behalf of the Recipient in writing. The Contractor shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation.

**3. TERM/TERMINATION.** This Agreement may be terminated at any time and for any reason or no reason by either party upon 30 days' written notice to the other party. Upon receipt of the written notice of termination from the Recipient or delivery of the written notice of termination by the Contractor, the Contractor shall immediately suspend any further work unless otherwise mutually agreed in writing by the parties. By such termination neither party may nullify obligations already incurred for performance or failure to perform for the services rendered prior to the date of termination of this agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

A regular, ongoing relationship of indefinite term is not contemplated. The Contractor has no right to assign services under this Agreement other than as specifically contemplated by this Agreement.

**4. RELATIONSHIP OF PARTIES.** It is understood by the parties that the Contractor is an independent contractor with respect to the Recipient, and not an employee of the Recipient. The Recipient will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Contractor.

It is contemplated that the relationship between the Contractor and the Recipient shall be a non-exclusive one. The Contractor also performs services for other organizations and/or individuals. The Recipient has no right to further inquire into the Contractor's other activities.

**5. RECIPIENT'S CONTROL.** The Recipient has no right or power to control or otherwise interfere with the Contractor's mode of effecting performance under this Agreement. The Recipient's only concern is the result of the Contractor's work, and not the means of accomplishing it. Except in extraordinary circumstances and when necessary, the Contractor shall perform the Services without direct supervision by the Recipient.

**6. PROFESSIONAL CAPACITY.** The Contractor is a professional who uses his or her own professional and business methods to perform services. The Contractor has not and will not receive training from the Recipient regarding how to perform the Services.

**7. PERSONAL SERVICES NOT REQUIRED.** The Contractor is not required to render the Services personally and may employ others to perform the Services on behalf of the Recipient without the Recipient's knowledge or consent. If the Contractor has assistants, it is the Contractor's responsibility to hire them and to provide materials for them.

**8. NO LOCATION ON PREMISES.** The Contractor has no desk or other equipment either located at or furnished by the Recipient. Except to the extent that the Contractor works in a territory as defined by the Recipient, his or her services are not integrated into the mainstream of the Recipient's business.

**9. NO SET WORK HOURS.** The Contractor has no set hours of work. There is no requirement that the Contractor work full time or otherwise account for work hours.

**10. EXPENSES PAID BY CONTRACTOR.** The Contractor's business and travel expenses are to be paid by the Contractor and not by the Recipient.

**11. CONFIDENTIALITY.** Contractor may have had access to proprietary, private and/or otherwise confidential information ("Confidential Information") of the Recipient. Confidential Information shall mean all non-public information which constitutes, relates or refers to the operation of the business of the Recipient, including without limitation, all financial, investment, operational, personnel, sales, marketing, managerial and statistical information of the Recipient, and any and all trade secrets, customer lists, or pricing information of the Recipient. The nature of the information and the manner of disclosure are such that a reasonable person would understand it to be confidential. The Contractor will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the Contractor, or divulge, disclose, or communicate in any manner any Confidential Information. The Contractor will protect such information and treat the Confidential Information as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the Contractor will return to the Recipient all Confidential Information, whether physical or electronic, and other items that were used, created, or controlled by the Contractor during the term of this Agreement.

This Agreement is in compliance with the Defend Trade Secrets Act and provides civil or criminal immunity to any individual for the disclosure of trade secrets: (i) made in confidence to a federal, state, or local government official, or to an attorney when the disclosure is to report suspected violations of the law; or (ii) in a complaint or other document filed in a lawsuit if made under seal.

**12. WORK PRODUCT.** Any and all work product created or generated in any form by Contractor under, arising from, connected with, or in relation to this Agreement shall belong to and be the sole property of the Recipient. Contractor hereby acknowledges and agrees that all such work product is the sole property of the Recipient.

**13. NO RIGHT TO ACT AS AGENT.** An "employer-employee" or "principal-agent" relationship is not created merely because (1) the Recipient has or retains the right to supervise or inspect the work as it progresses in order to ensure compliance with the terms of the contract or (2) the Recipient has or retains the right to stop work done improperly. The Contractor has no right to act as an agent for the Recipient and has an obligation to notify any involved parties that it is not an agent of the Recipient.

**14. ENTIRE AGREEMENT.** This Agreement constitutes the entire contract between the parties. All terms and conditions contained in any other writings previously executed by the parties regarding the matters contemplated herein shall be deemed to be merged herein and superseded hereby. No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto.

**15. WAIVER OF BREACH.** The waiver by the Recipient of a breach of any provision of this Agreement by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor.

**16. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**17. APPLICABLE LAW.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas. Venue shall be in El Paso County, Texas.

**18. NOTICES.** All notices and communications from one party to the other in connection with this agreement must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile as follows:

To RECIPIENT at:

Town of Anthony, Texas  
Attention: Mayor  
401 Wildcat  
P.O. Box 1269  
Anthony, Texas 79821  
Tel. No.: (915) 886-3944  
Fax No.: (915) 886-3115

To CONTRACTOR at:

Mark Ray  
544-2 Mesilla View Dr.  
Chaparral, New Mexico 88081  
Tel. No.: (915) 867-0495

**19. RESOLUTION OF DISPUTES.** In an effort to resolve any conflicts that arise during the term of this agreement or following completion of the engagement the subject of this agreement, the Recipient and Contractor agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to submission of this matter to mediation, unless compliance with this provision may result in barring the aggrieved party from pursuing this matter through litigation because of the lapse of any applicable statute of limitations. The Contractor and Recipient agree that if the dispute(s) between them cannot be resolved through negotiation, this matter shall be submitted to mediation with a mutually agreed mediator, unless compliance with this provision may result in barring the aggrieved party from pursuing this matter through litigation because of the lapse of any applicable statute of limitations. If the Contractor and Recipient cannot agree on a mutually acceptable mediator, either party may submit this matter to a court of competent jurisdiction for appointment by the court of a mediator. The Contractor and Recipient agree that if the dispute(s) between them cannot be resolved through mediation, either party may pursue their dispute(s) in a court of competent jurisdiction.

**20. BINDING EFFECT.** This agreement shall inure to the benefit of, and be binding upon the parties hereto, their heirs, successors, administrators, executors and assigns.

**21. ATTORNEY'S FEES.** Any signatory to this agreement who is the prevailing party in any legal proceedings against any other signatory brought under or with relation to this agreement, or transaction, shall be additionally entitled to recover court costs and reasonable attorney's fees, and all other litigation expenses, including but not limited to deposition costs, travel and expert witness fees from the non-prevailing party. This paragraph survives closing.

**22. INDEMNIFICATION AND LIABILITY.** The Contractor shall hold harmless, indemnify, and defend the Recipient from any demands, claims, causes of action or liability arising from damage to or destruction of real or personal property or bodily or personal injuries, whether arising from tort, contract, or otherwise, that occur directly or indirectly from the failure of the Contractor to comply with its obligations and responsibilities as set forth in this agreement or from the intentional conduct, gross negligence, or negligence of the Contractor, his, her, or its officials, officers, directors, principals, partners, affiliates, shareholders, employees, servants, agents and representatives, including attorney fees and costs, that arise from, relate to, or are connected with the Contractor's obligations and responsibilities as set forth in this agreement. Contractor shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, or punitive damages from the Recipient, including, without limitation, loss of income or profits. With respect to Recipient, the Recipient reserves and does not waive its right of governmental immunity from litigation and

liability, and does not waive its rights under the Texas Tort Claims Act. No provision of this agreement that imposes an obligation or restriction on the Recipient not permitted by applicable law shall be enforceable. This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by common law or the Texas Tort Claims Act. By entering into this agreement, Recipient, and its "public employees" as defined in the Texas Tort Claims Act, do not waive any sovereign immunity, nor do they waive any limitations(s) of liability pursuant to law. No provision of this agreement modifies or waives any provision of the Texas Tort Claims Act. Further, this agreement is not intended to alter or reallocate any defense or immunity presently authorized by law, or to create or transfer any liability arising under the law. The parties respectively shall each bear any liability or risk of loss for claims arising from the acts or omissions of their respective employees and agents. Each party agrees that it shall be responsible for its own officers, agents and employees who are performing duties under this agreement, and neither shall be liable or responsible for the acts or omissions of the other's officers, agents or employees.

**23. RELEASE.** Contractor agrees not to purport to bind Recipient to any obligation not assumed herein by Recipient, unless Contractor has express, written authority to do so from Recipient, and then, only within the strict limits of that authority.

**24. CO-PARTNERS.** Nothing herein contained is intended or should be construed in any way to create or establish the relationship of co-partners between the parties or to establish either party as an agent, representative or employee of the other party for any purpose or manner whatsoever.

**25. THIRD PARTY BENEFICIARIES.** It is specially agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of this agreement to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to this agreement to maintain pursuant to the provisions of this agreement a suit of any nature based upon this agreement.

**26. CONFLICTS OF INTEREST.** Contractor warrants that he, she, or it presently has no interest, and shall not acquire any interest, directly or indirectly, that would conflict in any manner or degree with the performance of services required under this agreement. When and if such provisions become applicable, Contractor also shall promptly provide a disclosure to Recipient.

**27. APPROPRIATIONS.** This agreement's terms are contingent upon the Recipient making sufficient appropriations and authorization for the performance of this agreement. If the Recipient does not make sufficient appropriations and authorizations, this agreement may be terminated upon the Recipient giving written notice to Contractor as set out in this agreement. The Recipient's decision whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

**28. COMPLIANCE WITH LAW.** Contractor agrees to comply with all federal, state, and local statutes, rules, regulations and ordinances applicable to the work or services authorized in this agreement.

**29. PERMITS, LICENSES AND INSURANCE.** Contractor, at its sole cost and expense, shall procure all permits and licenses, and insurance as required by law and pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the services set forth in this agreement. Contractor and Contractor's agents and employees will not be considered Recipient employees. Any claims that may arise under the State of Texas workers' compensation laws on behalf of Contractor and/or Contractor's agents and/or employees and any claims made by any third party as a consequence of any act or omission on the part of Contractor and/or Contractor's agents and/or employees are in no way Recipient's obligation or responsibility. If Contractor fails to comply with the State of Texas workers' compensation law and applicable rules when required to do so, the agreement may be canceled by the Recipient effective immediately.

**30. JOINTLY DRAFTED.** The parties acknowledge that this agreement has been jointly drafted by all of the parties.

**31. COUNTERPARTS.** If this agreement is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one instrument.

**32. HEADINGS.** The headings of the sections of this agreement are inserted only for convenience or reference and are not intended to be construed to modify, define, limit, or expand the intent of the parties.

**33. AUTHORITY.** Each person signing below represents that he or she has read this agreement in its entirety; understands its terms; is duly authorized to execute this agreement on behalf of the party indicated below by his or her name; and agrees on behalf of such party that such party will be bound by those terms.

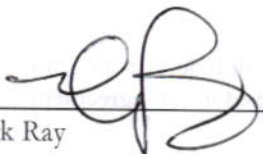
**34. SIGNATORIES.** This Agreement shall be signed by Anthony David Turner, Mayor on behalf of Town of Anthony, Texas and by Mark Ray. This Agreement is effective as of the date first above written.

**IN WITNESS WHEREOF,** each party has executed this agreement on the date first written above.

RECIPIENT:  
Town of Anthony, Texas

By:   
\_\_\_\_\_  
Anthony David Turner  
Mayor

CONTRACTOR:  
Mark Ray

By:   
\_\_\_\_\_  
Mark Ray