

**AGENDA ITEM REQUEST FORM**

**Hays County Commissioners Court**

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

**AGENDA ITEM**

Authorize the County Judge to execute a renewal of the Consulting Service Agreement between Hays County and Pix Howell, in his capacity as majority shareholder of Xblink, Inc. d/b/a Diverse Planning and Development.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	September 17, 2013	\$25,000 NTE

**LINE ITEM NUMBER**

Not budgeted

**AUDITOR USE ONLY**

**AUDITOR COMMENTS:**

This expenditure is not budgeted for FY 2014

**PURCHASING GUIDELINES FOLLOWED:** N/A

**AUDITOR REVIEW:** BILL HERZOG

REQUESTED BY	SPONSOR	CO-SPONSOR
Cobb	COBB	N/A

**SUMMARY**

This renewal will extend the contract to September 30, 2014.

FILED: 09 17 2013  
HAYS COUNTY COMMISSIONERS' COURT  
Resolution # 28308 VOL V PG 237

**CONSULTING SERVICES AGREEMENT**  
**HAYS COUNTY, TEXAS**

**HAYS COUNTY**, a political subdivision of the State of Texas (hereinafter the "County") with administrative offices at 111 E. San Antonio, Suite 300, San Marcos, Texas 78666, and **Pix Howell, in his capacity as majority shareholder of Xblink, Inc. d/b/a Diverse Planning and Development** (hereinafter "Contractor"), whose primary place of business is located at P.O. Box 663, Wimberley, TX 78676, hereby enter into this Consulting Services Agreement (hereinafter "Agreement") effective this the 1<sup>st</sup> day of October 2013 (hereinafter "Effective Date"). The County and Contractor (collectively "the parties to this Agreement" or "the parties") agree as follows:

**1. SCOPE**

Under limited general direction Contractor shall work with Hays County and other central Texas counties to promote membership and participation in the retasking of the Coalition for Central Texas Utilities Development Corporation, commonly known as "the UDC". Operating in this capacity may include performing such work as giving individual or group presentations; facilitating individual or group discussions; and production of graphic communication materials related to the retasking cited above.

**2. SERVICES**

Contractor agrees to perform services for the County in accordance with the County's instructions and, in particular, the instructions of the Hays County Precinct 4 Commissioner or his designee; and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be limited to those services and terms cited in Section 1, above, and any additional services to be attached as Exhibit "A", if, as, and when they are attached hereto and signed by the parties. If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibits "A" and/or "C"), the Compensation cited in Section 5 of this Agreement may also be amended by the Parties to conform with the change in Scope of Services, as agreed in writing.

**3. ADDITIONAL TERMS**

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit "C", attached hereto.

**4. DURATION; TERMINATION**

The parties agree that the Work shall be performed within Fiscal Year 2014, and shall terminate on or before September 30, 2014

(hereinafter the "Completion Date"). The County may grant extensions of the Completion Date for all reasonable extension requests and shall do so in writing.

Either Party may terminate this Agreement for any reason by provision of 30 days' written notice to the non-terminating party.

#### **5. COMPENSATION**

Contractor will be compensated for the Work by way of an initial retainer, followed by a flat, monthly fee basis. Despite any reference to Contractors rate schedule, which shall be used as a reference only in the event of a change in the Scope of Services (i.e. Amendment), the parties agree that the County shall pay Contractor a fee not to exceed \$25,000.00 for the Work under this Agreement, which shall be initiated with a \$5,000.00 retainer, payable within 15 business days of the Effective Date.

#### **6. PAYMENT**

The County shall pay Contractor on or about the last day of each month that Contractor invoices for Work performed under this Agreement. Contractor shall invoice for each month in which work is performed and shall account for the County's payment of the retainer in his initial invoices, citing the amount of the retainer that remains, if any, after invoice. County shall not be obligated to make payments in addition to the retainer until the retainer has been exhausted entirely.

The not-to-exceed amount cited in Section 5, above, shall include any and all reasonable expenses directly related to Contractor performance of work under this Agreement. All contract-related, reimbursable expenses shall be clearly notated on Contractor's invoices, and shall be subject to approval of the Hays County Auditor.

#### **7. NOTICE (GENERAL)**

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Hays County, Attn: Judge Bert Cobb, Hays County Judge, 111 E. San Antonio, Suite 300, San Marcos, Texas 78666; Facsimile - (512)393-2282; Email - bert.cobb@co.hays.tx.us; and Commissioner Ray Whisenant, 195 Roger Hanks Parkway, Dripping Springs, Texas 78620; Facsimile - (512) 858-2655; Email - ray.whisenant@co.hays.tx.us.

All notices issued by the County under or regarding this Agreement shall be provided in writing to Contractor at: Pix Howell, P.O. Box 663, Wimberley, Texas 78676; Email-pix.howell@gmail.com.

Notices from one party to another under this Section may be made by U.S. Mail, parcel post, or Electronic Mail, sent to the designated contact at any of the designated addresses cited above.

## **8. INSURANCE**

*Intentionally Deleted*

## **9. MUTUAL INDEMNITY**

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable.

The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement.

Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

## **10. COMPLIANCE WITH LAWS**

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

## **11. SURVIVAL**

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 2, 3, 4, 5, 9, 11, 13, 14, 15, 16, 17, 19, and 20.

## **12. FORCE MAJEURE**

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all

remaining duties under this Agreement within a reasonable time of such remedy.

### **13. SEVERABILITY**

If any Section or provision of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are as consistent with the parties' intents as possible.

### **14. MULTIPLE COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

### **15. SECTION HEADINGS, EXHIBITS**

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled "Overview," shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

### **16. WAIVER BY PARTY**

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

### **17. GOVERNING LAW AND VENUE**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Hays County, Texas.

### **18. ASSIGNMENT**

Neither party to this Agreement may assign its duties, interests, rights, benefits and/or obligations under this Agreement, in whole or in part, without the other party's prior written consent thereto.

### **19. BINDING EFFECT**

Subject to any provisions hereof restricting assignment, this

Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

**20. RIGHT TO AUDIT**


County shall, upon five (5) days' written notice to Contractor, have a right to inspect all receipts, invoices, proofs of purchase, records of employee activity, records of expenditures, and other relevant data related to the Contract. Unless otherwise requested by Contractor, County's inspection shall be performed between the hours of 8 a.m. and 5 p.m., Monday through Friday. Contractor shall ensure that any subcontract executed by Contractor in furtherance of this Contract includes an obligation by subcontractor to turn over, upon written request by Contractor, all receipts, invoices, proofs of purchase, records of employee activity, and records of expenditures related to this Contract. County shall have the same right under this Section to inspect subcontractor materials as it does Contractor materials. This Section shall survive termination of this Contract, and shall remain in effect for five (5) years from the commencement of this Contract.

**21. ENTIRE AGREEMENT; AMENDMENT**

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this Agreement must be made in writing and signed by the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND DO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.

  
\_\_\_\_\_  
Hays County Texas

  
\_\_\_\_\_  
Contractor

By: Judge Bert Cobb, M.D. \_\_\_\_\_

By: Pix Howell \_\_\_\_\_

Hays County Judge \_\_\_\_\_

On behalf of Xblink, Inc. \_\_\_\_\_

**EXHIBIT "A"**

The Parties recognize that the initial Scope of Work is contained in Section 1 of the above Agreement. Any modifications to Work performed under this Agreement shall be incorporated into this Exhibit "A", signed and dated by the Parties.

**EXHIBIT "B"**

The hourly fee schedule for Contractor's consulting services, whether or not such services fall outside the Scope of the Work described in this Agreement, shall be \$250.00 per hour.

Fees for any subcontractors and/or support staff shall be agreed to in writing by the Parties, in advance of any work performed by such individuals.



EXHIBIT "C"

Additional Terms to the Services provided by Contractor, if any, are as follows:

A.N/A

B.N/A

C.N/A

D.N/A

E.N/A

F.N/A

G.N/A

H.N/A

I.N/A

J.N/A

K.N/A

L.N/A