



AGREEMENT FOR ASSESSMENT SERVICES

July 31, 2019

This Agreement for Training Services (herein referred to as the Agreement) is entered into by Korn Ferry (US), (herein referred to as "Korn Ferry") and the County of El Paso, Texas (herein referred to as "County"). Korn Ferry and County are referred to individually as a "Party" and collectively as the "Parties". This letter of engagement, including Attachments 1 and 2, forms the agreement (the "Agreement") under which Parties will work together.

Korn Ferry will provide the professional services described in Attachment 1 (the "Services"). Michael Piacentini & Kathy Hamill will lead the assignment. Korn Ferry may include other consultants, as needed, to assist in the provision of the Services.

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|-----------------------------|--|
| Effective Date: | This Agreement shall become effective upon execution of signatures by both parties. |
| Term: | The Term of this Agreement shall be from Effective Date through one year after Effective Date. |
| Amendment: | Amendment to this Agreement shall be made in writing and acknowledged in writing by the signature of both parties. |
| Training Time: | To be determined by the agreement of both parties and acknowledged in writing by the signature of both parties. |
| Training Location: | 500 E. San Antonio St. El Paso, TX 79901 |
| Total Training Cost: | \$47,230.00 USD plus out-of-pocket direct expenses not to exceed \$2,770.00, for a not-to-exceed total amount of \$50,000.00, including any taxes from which the County is not exempt. |

Training Topics: Korn Ferry shall provide training as represented in each of the course descriptions provided to the County and attached to this agreement as Exhibit 1.

Payment Terms: The County shall issue payment within 30 days of completion of each training.

Cancellation: If the County cancels a training date, the County will be responsible only for actual business costs incurred by Korn Ferry in preparation for the cancelled training. Korn Ferry will provide the County a detailed written invoice of actual business costs incurred within 14 business days of the date the County gives Korn Ferry notice of cancellation for any training.

If Korn Ferry cancels a training date, Korn Ferry will be responsible only for actual business costs incurred by the County in preparation for the cancelled training. The County will provide Korn Ferry a detailed written invoice of actual business costs incurred within 14 business days of the date Korn Ferry gives the County notice of cancellation for any training.

Neither party will be liable for damages due to cancellation of a training due to Force Majeure. For the purpose of this Agreement, an "Event of Force Majeure" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and the observance of standard business practice, cannot be, or be caused to be, prevented, avoided or removed by such Party, and (ii) such circumstance materially and adversely affects the ability of the Party to perform its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable

alternative measures in order to avoid the effect of such event on the Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof.

Rescheduling: Changes made to training topics or times of a training after the Effective Date of this Agreement may result in adjustment of charges, as agreed by the parties.

Contingent Funding Availability Clause

Korn Ferry acknowledges that the County is a political subdivision of the State of Texas, and as such adopts its budget according to the laws of the State of Texas for a period of one year beginning on October 1st and terminating on September 30th of each year. In the event that the County does not intend to include sufficient funds in its next annual budget, in any fiscal year during the term of this Agreement, for the payment of its obligations hereunder, the County may terminate this Agreement without penalty or further payment, upon 30 days written notice to Korn Ferry, to be effective on September 30th of the then current fiscal year.

Accepted by:

COUNTY OF EL PASO

KORN FERRY (US)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 1 SCOPE OF SERVICES

Our Understanding of Your Needs

Chief Administrator wants 17 of her reports to go through KF360 Assessments as well as KF360 Pulse Assessments to further assist with their leadership development. They would also like to have a focus group competency modeling session in El Paso to understand first what competencies they want to focus on before deploying these assessments.

Deliverables

KF360 Full-Service Assessments for 17 people
 KF360 Full- Service Pulse Assessments for 17 people
 60-Minute Feedback Sessions led by a Korn Ferry Consultant – 17 people
 Competency Card Sort Session to determine competency used in KF360 Assessment

Dates

Start date: August 2019

Anticipated completion date: August 2020

Professional Fees and Expenses

- The professional fees for the Services are \$42,169. Korn Ferry assesses an administrative charge equal to twelve percent (12%) of professional fees (\$5,061) for a total of \$47,230. Invoices are due upon receipt.
- Direct out-of-pocket expenses including travel, lodging, and video-conferencing, will be billed on a monthly basis as incurred; however, total fees for the purpose of this agreement shall not exceed \$50,000.

Billing Information

Invoices will be sent to the following address:

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|---------------------|---|
| Company: | County of El Paso |
| Address: | 500 E. San Antonio Ave., #302A |
| Address: | El Paso, Texas 79901 |
| Attn (Name, Title): | Claudia Y. Murguia, Executive Coordinator |
| Email, Phone: | clmurguia@epcounty.com , (915) 546-2215 |

Accounts Payable Contact:

| | |
|---------------------|--|
| Company: | County of El Paso |
| Address: | 800 Overland |
| Address: | El Paso, Texas 79901 |
| Attn (Name, Title): | Luis Martinez, County Auditor Manager, Sr. |
| Email, Phone: | lumartinez@epcounty.com , (915) 546-2040, ext. 3478 |

Purchase Order Number (Check the appropriate box):

- ☒ PO Number required on invoice. PO #
- ☐ PO Number *not* required on invoice.

ATTACHMENT 2

GENERAL TERMS AND CONDITIONS

1. **Korn Ferry's Responsibilities.** Korn Ferry will perform the Services in a competent and professional manner and in accordance with generally acceptable industry standards. Korn Ferry may remove and replace any of its resources performing the Services; any resource removed will be replaced by a resource of comparable training and experience.

2. **County's Responsibilities.** County will timely provide Korn Ferry with the documentation, information, access to its personnel and the cooperation Korn Ferry reasonably requires to provide the Services. County will not use the Services, New Materials, or Korn Ferry Materials (defined below) as the sole basis on which it determines whether to take any employment action relating to any of its employees or candidates (including the hiring or termination of such employees or candidates).

3. **Taxes.**

a. Pursuant to Section 151.309 of the Texas Tax Code, El Paso County qualifies for exemption from sales, excise and use taxes imposed under the Limited Sales, Excise and Use Tax Act, which is codified at Chapter 151 of the Texas Tax Code. In accordance with Section 151.309, a taxable item sold, leased, or rented to, or stored, used, or consumed by the County is exempt from the taxes imposed under Chapter 151.

b. If County is required by applicable law to deduct or withhold taxes from any payment due to Korn Ferry, County will: (i) withhold the legally required amount from payment; (ii) remit the withheld tax to the applicable taxing authority; and (iii) within sixty (60) days of payment, deliver to Korn Ferry original documentation or a certified copy evidencing remittance of withheld tax. If County does not provide evidence of payment of withheld taxes, County will reimburse Korn Ferry for the tax withheld from payment to Korn Ferry. County will comply with all applicable law, including income tax treaties and protocols, in determining the amount of tax to withhold.

4. **Representations and Warranties.**

a. Each Party represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, and has full power and authority to perform all of its obligations under this Agreement; and (ii) the person executing this Agreement on its behalf is duly authorized and empowered to bind the Party to this Agreement.

b. County further represents and warrants that: (i) it has provided the required notices and obtained all necessary rights and consents to provide to Korn Ferry, or to permit Korn Ferry to collect on County's behalf, an individual's personal data, including sensitive personal data, for the purposes stated in this Agreement; and (ii) the transfer to, collection of and use by Korn Ferry of such personal data does not violate any applicable laws or rights of any third party.

5. **Intellectual Property.**

a. County retains ownership of all materials, and the intellectual property rights in those materials, provided to Korn Ferry by or on behalf of County ("**County Materials**"). Subject to Section 5.b., County will also own copies of reports and analyses Korn Ferry delivers to County under this Agreement ("**New Materials**"). County may use the New Materials in the form provided for its internal purposes only; County may not use the New Materials for any other purpose or permit any other person, firm or entity to use the New Materials.

b. The performance of the Services and creation of the New Materials will require the use of Korn Ferry's materials and methodologies that are considered proprietary, copyright, patent, and trade secret materials ("**Korn Ferry Materials**"). Korn Ferry Materials include methodologies, preexisting programs, instruments, models, proprietary information, patents, registered and unregistered trademarks, trade names, trade secrets, copyrights, prototypes, inventions, algorithms, designs, compilations, computer software programs, tools, databases, evaluation guides, report forms, scoring guides, scoring algorithms, scoring instructions, scoring software and norms. Korn Ferry may customize, modify,

translate, or expand Korn Ferry Materials to apply to County's unique requirements (collectively, a "**Customization**"). Any Customization will be Korn Ferry Materials. Korn Ferry owns Korn Ferry Materials at all times. Korn Ferry reserves all rights not expressly granted under this Agreement. Licenses to Korn Ferry Materials must be procured through a separate license agreement. This Agreement will not be construed as a license to copy, modify, create derivative works from, publish, disclose or otherwise use Korn Ferry Materials. County will not download, copy, publish, disclose, create derivative works of, disassemble, decompile or otherwise attempt to reverse engineer Korn Ferry Materials, nor will County permit any other person to do so. County will be liable for all violations of these restrictions by its employees.

c. If a Customization includes County Materials, County grants to Korn Ferry a non-exclusive, limited, non-transferable license to use the County Materials solely in connection with the Customization. County represents and warrants that it has all the necessary rights to include the County Materials in the Customization.

6. Confidential Information.

a. One Party ("**Discloser**") may disclose Confidential Information to the other Party ("**Recipient**") in connection with this Agreement. "**Confidential Information**" means all oral or written information concerning a Party, including the Party's business and business activities (past, present and future), financial information, technical information, customer information, intellectual property, methodologies, strategies, plans, documents, drawings, designs, tools, models, inventions, and patent disclosures, whether or not marked or identified as "confidential," that may be obtained from any source as a result of this Agreement. Confidential Information does not include information, technical data, or know-how that: (i) is or becomes a matter of public knowledge through no fault of Recipient; (ii) was lawfully in Recipient's possession or known by it prior to its receipt from Discloser; (iii) was rightfully disclosed to Recipient by another person without restriction; (iv) Recipient independently develops without use of Discloser's Confidential Information; or (v) Discloser approves in writing for release.

b. Recipient will not use any Confidential Information it receives from Discloser for any purpose other than to perform its obligations under this Agreement. Recipient will not disclose any Discloser Confidential Information to third parties or to its employees, other than employees or third parties who are required to have the Confidential Information to perform obligations under this Agreement and who are bound by confidentiality terms substantially similar to those in this Section. Recipient and Discloser will each be responsible for any breach of this Agreement by its representatives. Recipient will protect Confidential Information from disclosure to others using the same degree of care it uses to protect its own confidential information, but in any case no less than a commercially reasonable degree of care. If Recipient is required by law, regulations, or court order to disclose any of Discloser's Confidential Information, Recipient, where legally allowed, will promptly notify Discloser in writing prior to making any disclosure.

c. The parties agree that the County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act. Bidder/Proposer agrees that it has marked any information that it considers to be confidential, proprietary, and/or trade secret in its bid/proposal. County agrees to provide notice to Bidder/Proposer in accordance with the Public Information Act in the event the County receives a request for information under the Public Information Act for information that the Proposer has marked as confidential, proprietary, and/or trade secret.

d. Upon request, Recipient will destroy Discloser's Confidential Information in its possession, but Recipient may: (i) retain copies of Confidential Information that it is required to retain by law or regulation; (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product; and (iii) store copies made as part of routine back up of its information technology systems but the Confidential Information must continue to be handled in accordance with this Section.

d. Services may include coaching services for specific individual(s) ("**Coaching Services**"). Korn Ferry and the individual must have open and frank communications for the Coaching Services to be effective. Communications between Korn Ferry and an individual being coached will be, as far as is

reasonably possible, confidential. Korn Ferry will not be asked or allowed to disclose information provided to Korn Ferry in confidence by a coached individual, except information which Korn Ferry in good faith believes is in one of the following categories: (i) information that the individual or some other person is, has, or may become engaged in illegal activity; (ii) information that the individual or some other person has, is or may become a danger or health & safety risk to himself or herself or third persons; (iii) information that the individual authorizes Korn Ferry to release; (iv) information that generally informs County of the scope, nature and timing of any activity, the goals in the development and coaching plan for the Coaching Services, or the progress being made in attaining the established goals or as otherwise required in connection with the engagement; or (v) information that may have a material or adverse effect on County, the Korn Ferry coach or Korn Ferry. Korn Ferry and the Korn Ferry coach may obtain information from the individual's supervisors, co-workers and other persons concerning the employee's work performance. This information, including the identity of any person providing the information, is and will remain so far as is reasonably possible confidential and neither County nor the coached individual will have access to this confidential information. The individual will be required to agree to these coaching rules as a condition of participating in the coaching assignment. If any Confidential Information arising from the Coaching Services is required to be disclosed by any subpoena or other court order, under any applicable law or regulation, Korn Ferry will be entitled to make any required disclosure. Korn Ferry will undertake to notify County and the individual prior to disclosing the Confidential Information if time permits, unless prohibited by the terms of the order or legal requirement.

6. Personal Data. Korn Ferry will not disclose to County the raw data, including personal data, that Korn Ferry collects in providing the Services, and upon which the New Materials will be based (the "Raw Data"). Korn Ferry will use Raw Data to provide the Services as specified in this Agreement or as otherwise instructed and permitted by County. The Parties agree that the Services include archiving the Raw Data and using de-identified and aggregated Raw Data for research, studies, development, benchmarking, statistics, analytics, and to develop, improve, and enhance Korn Ferry's products and services. Raw Data will be treated in accordance with Korn Ferry's Global Privacy Policy, which is available on Korn Ferry's website and incorporated into this Agreement by reference.

7. Limitation of Liability. The County agrees to limitation of liability only to the extent permitted by the laws and the constitution of the State of Texas, particularly Section 7 of Article XI of the Texas Constitution, and with the mutual understanding that the County of El Paso is a political subdivision of the State of Texas and the grant of public funds without due consideration is prohibited by State law. Both parties agree that no consideration has been furnished to the County of El Paso in relation to this clause. Nothing in this paragraph shall be construed as a waiver of immunity of any kind or nature, as an assumption of liability or debt, or as the lending of credit by the County of El Paso.

8. Insurance.

Successful proposer agrees to keep in full force and effect, a policy of public liability and property damage insurance issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners' of the State of Texas, with coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of services limits of not less than the following sums:

GENERAL LIABILITY:

\$1,000,000 – Each Occurrence

\$1,000,000 – General Aggregate

County named as "Additional Insured"

Waiver of Subrogation

AUTOMOBILE:

\$1,000,000

County named as "Additional Insured"
Waiver of Subrogation

WORKERS COMPENSATION:
Statutory Limits
Waiver of Subrogation

PROFESSIONAL SERVICES additional requirements:
Limit of \$1,000,000 for E&O/Professional Insurance.

CERTIFICATE OF LIABILITY INSURANCE

In the remarks section should include job description or project name and/or number. Successful bidder shall carry in full force Workers' Compensation Insurance Policy (ies), if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the successful bidder. Current insurance Certificates certifying that such policies as specified above are in full force and effect shall be furnished by successful bidder to the County. Insurance is to be placed with insurers having a best rating of no less than A. The Bidder shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses within ten (10) business days of execution of this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The Bidder shall be required to submit annual renewals for the term of this contract prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity. The County agrees to provide Bidder with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property. Proposer shall have the right to defend any such claim, demand or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the Bidder. In no event shall the County be liable for any damage to or destruction of any property belonging to the Bidder.

County of El Paso shall be listed as the additional insured on policy certificates.

The County reserves the right to review the insurance requirements during the effective period of the contract. The only remedy for the County will be termination of the agreement without Bidder's fault.

9. Independent Contractor. Korn Ferry is at all times an independent contractor. Korn Ferry Employees remain in Korn Ferry's employ and will not be deemed County's agents or employees. Neither Party is authorized to bind or commit the other Party in any respect or to accept legal process on the other Party's behalf. Neither Party will be liable to any agent, subcontractor, supplier, employee, or customer of the other Party for any commission, compensation, remuneration, or similar benefit of any nature whatsoever.

10. Assignment. Neither Party may sell, assign, or transfer this Agreement, without the other Party's written consent, except no consent is required if the assignment results from the assignor's merger, consolidation, spin-off, split-off or acquisition, but the assignment must be limited to the assignor's survivor, subsidiary or successor. Subject to the foregoing, this Agreement will inure to the benefit of and will be binding upon Korn Ferry, County and their respective successors and permitted assigns.

11. Governing Law. This Agreement will in all respects be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law provisions and without effect to principles of conflicts of law, regardless of the place of making or performance. Venue for any legal action under this agreement will be El Paso, Texas.

12. Non Waiver. Neither Party's failure at any time to enforce any of the provisions of, or any right

or remedy available to it under, this Agreement or at law or in equity, or to exercise any option provided, will constitute a waiver of that provision, right, remedy or option or in any way affect the validity of this Agreement. Neither Party's waiver of any default by either Party will be deemed a continuing waiver, but will apply solely to the instance to which that waiver is directed.

13. Severability; Interpretation. Every provision of this Agreement will be construed, to the extent possible, to be valid and enforceable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, that provision will be deemed severed from this Agreement, and all other provisions will remain in full force and effect.

15. No Third Party Beneficiary Rights. This Agreement is not intended to be for the benefit of any person other than County and Korn Ferry. No other person, including any candidates or prospective candidates, will be considered third party beneficiaries of, or otherwise entitled to, any rights or benefits arising in connection with this Agreement.

16. Entire Agreement; Conflicts. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. Preprinted terms and conditions on any purchase order issued by County, or terms and conditions included in County's vendor set up process, under this Agreement are superseded in their entirety by this Agreement and without force or effect, even if Korn Ferry signs the purchase order or acknowledges such terms to be set up as a vendor in County's systems and whether such signature or acknowledgement occurs prior to or after the execution of this Agreement. All purchase orders must include a reference to this Agreement. County has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained in this Agreement. This Agreement may not be modified or amended except by a writing signed by both parties.

The County of El Paso is an equal opportunity employer.

17. Sovereign Immunity. The County specifically reserves any claim it may have to sovereign, qualified, or official immunity as a defense to any action arising in conjunction with this contract.

18. Compliance with Legal and Regulatory Requirements. Each Party will comply with all applicable legal and regulatory requirements in connection with this Agreement, which include:

- a. anti-bribery and anti-corruption laws and regulations;
- b. international trade sanctions, embargoes, trade restrictions or export bans imposed by the US, EU, UK, UN or any other governmental or supranational body with jurisdiction over this Agreement or either Party ("Sanctions"). County represents and warrants that it: (i) has not been designated as a subject of Sanctions; (ii) is not owned or controlled by any individual or entity subject to Sanctions; (iii) is not located or organized in, or owned or controlled by persons or entities in a jurisdiction or region subject to Sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea Region); and (iv) will not use the Services or work product (including tools and intellectual property) to provide benefits specifically targeted at or intended for business operations in countries or regions subject to Sanctions, and will not transfer or re-export the Services or work product (including tools and intellectual property) to any other party if the transfer would constitute a violation of Sanctions;
- c. anti-money laundering laws and regulations relating to the prevention of money laundering or terrorist finance; and
- d. information privacy and data protection laws and regulations relating to the protection, disclosure and use of individuals' personal data including the General Data Protection Regulation (GDPR) and other laws and regulations that mandate the protection of personal data.

Any breach of this Section is a material breach of this Agreement and grounds for immediate termination by the non-breaching Party.

- e. Korn Ferry agrees to submit a completed Conflict of Interest Questionnaire and Form 1295 as required by Texas Law.

19. Miscellaneous. No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party because that Party has or is deemed to have drafted the provision. All section headings and captions are for the Parties' convenience only, are not part of the text, and will not be deemed in any way to limit or affect the meaning of this Agreement. When used in this Agreement, "including" means "including without limitation." This Agreement may be executed in any number of counterpart copies, each of which will be deemed an original, but which taken together constitute a single instrument. Either Party may terminate this Agreement immediately if: (i) a Party is in breach, the non-breaching Party has provided the breaching Party with a written notice and the breaching Party has failed to cure the breach within thirty (30) days of its receipt of notice; or (ii) the other Party enters into bankruptcy proceedings, becomes insolvent, or there is an appointment of a receiver for the benefit of creditors, or cessation of business. Except as expressly provided in this Agreement, all remedies available to either Party for breach of this Agreement or at law or in equity are cumulative and may be exercised concurrently or separately. Those sections of this Agreement that are intended by their nature to survive termination or expiration of this Agreement will survive.

Terms Specific to the Assessments:

- 1. Term.** The Assessment term will begin within 30 days of contract approval and continue for 1 (one) year. The assessment volume may be increased at any time during the Assessment term by execution of another SOW or email order by the Client.
- 2. Assessment Expiration.** Client must use all assessments by the end of the Assessment Period. Client will forfeit, and will not receive a refund or credit for, any unused assessments remaining at the end of the Assessment Period. Assessments may be utilized by Client only; they may not be transferred to any affiliates or any third parties. Once launched, assessments may not be transferred to another individual.
- 3. Scope of Permitted Use; Limited Disclosure.** The Products and the Reports are not intended as a substitute for professional judgment. Client must not use the Reports as the sole source for any decision relating to Client's employees or candidates, including reprimand, compensation, employment status or work opportunities. Client may use the Reports only for their intended purposes and will adhere to best practices and procedures as indicated by Korn Ferry. Client must use the Reports in the form provided only. Client may not create any derivative works of the Reports. Korn Ferry will only disclose Reports to a certified coach, certified facilitator or the individual subject of the Report in accordance with Korn Ferry's best practices procedures.
- 4. "Assessment Administration"** means: (i) account set-up; (ii) creating assessment events; (iii) selecting and adding competencies, capabilities or items, as defined by Client; (iv) entering assessment participants to provide or receive feedback and establishing their relationship, as provided by Client; (v) selecting and determining e-mail invitation and reminder notification content; (vi) supplying assessment event status to Client as requested; and (vii) compiling standard Reports and sending them to the applicable individual. Full Service Assessment Administration means Korn Ferry will perform all Assessment Administration.