

CITY OF LAGO VISTA, TEXAS

RESOLUTION 17-1689

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR SERVICES WITH CONSULTANT MICHELLE HANNA CUMMINGS FOR PROFESSIONAL ASSISTANCE AT THE AIRPORT.

WHEREAS, the City approved the Lago Vista Rusty Allen Airport Action Plan (Plan) under Ordinance #16-12-15-03 which governs the growth of the Airport and its environs; and

WHEREAS, the Plan will require several contracts to be updated, including but not limited to, a revised through the fence agreement between the Rusty Allen Airport Property Owners Association and the City; and

WHEREAS, the Plan will require new and revised codes to be adopted by the City, including but not limited to, formal adoption of Airport fees; and

WHEREAS, the Development Services Department will require additional assistance in regards to these endeavors and will need a skilled consultant to assist the Development Services Director; and

WHEREAS, Michelle Hanna Cummings has been identified as an individual who has personal knowledge of the Airport Action Plan, the rules and regulations under which the airport operates including but not limited to Texas Department of Transportation (TxDOT) rules and regulations; and

WHEREAS, Michelle Hanna Cummings has indicated her willingness to assist the City with its matters concerning the Lago Vista Rusty Allen Airport and has no hindrances from any past work which would preclude her from providing services to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS:

THAT, the City Council of the City of Lago Vista, Texas, does hereby authorize the Interim City Manager to execute a contract with consultant Michelle Hanna Cummings regarding professional assistance at the Airport, a copy of which is attached hereto as Exhibit A and incorporated herein for all purposes.

AND IT IS SO RESOLVED.

PASSED AND APPROVED this 16th day of February, 2017.

Attest:

Sandra Barton

Sandra Barton, City Secretary



Dale Mitchell

Dale Mitchell, Mayor

On a motion by Councilman Sullivan, seconded by Councilman Tippetts, the above and foregoing instrument was passed and approved.

EXHIBIT "A"
CONSULTING AGREEMENT

This Agreement is made as of the 16th day of February, 2017 between The City of Lago Vista, Texas ("City"), a home-rule municipality incorporated by the State of Texas and Michelle Hanna Cummings ("Consultant"); collectively referred to herein sometimes as the "Parties."

RECITALS

- A. The City has a need for professional assistance at the Lago Vista Rusty Allen Airport; and
- B. Consultant understands and has knowledge of the duties and services necessary to fulfill this job; and
- C. City desires to retain Consultant to consult and perform the duties, including but not limited to research of information, preparation of documents, and interacting with other professionals associated with the Airport or other airports, and perform such other duties as may be assigned, on the terms set forth below.

NOW THEREFORE, for and in consideration of the services to be performed hereunder, and the monetary consideration to be paid therefor as provided herein, and other good and valuable considerations, the parties hereto agree as follows:

I. SERVICES, COMPENSATION AND TERM

- A. Services to be Provided by the Consultant
 - A.1 Subject to the general supervision and control of the City, as exercised by the City Manager, and subject to the provisions of the Terms and Conditions contained herein, the Consultant is engaged to provide the services set forth below.
 - A.2 The Consultant shall provide consulting services, including but not limited to research of information, preparation of documents, and interacting with other professionals associated with the Airport or other airports, and perform such other duties as may be assigned, from time to time, may assign.
 - A.3 The Consultant shall provide not less than monthly a report including information related to the research and documentation which has been performed and which property it is related to, as well as upcoming projects or meetings scheduled with other airport professionals for the benefit of and furtherance of the City's management and operation of the Lago Vista Rusty Allen Airport.
- B. Compensation for Services provided by the Consultant
 - B.1 Consultant's professional fees shall be paid \$100.00 per hour, with a not to exceed \$2,000 per month. In the case of an item or other matter that will require a substantial amount of time, the City Manager shall have sole authority to authorize exceeding the not-to-exceed amount after receiving an estimate of the time involved from the Consultant.

B.2 Business expenses may be from time to time incurred. The City will pay or reimburse Consultant to the extent that such business expenses as are pre-approved by the City Manager.

C. Term and Hours of Work

C.1 This Agreement shall be in effect for a term of twelve (12) months, unless otherwise terminated by one of the parties. Consultant shall work such hours as Consultant believes to be necessary to fulfill the obligations of the position in coordination with the City Manager. Consultant shall be available and may be called upon to devote time outside of the normal City business hours in performing the services required. Due to the nature of her services as a consultant, Consultant and the City Manager, or the City Manager's designee, will generally agree upon a schedule and hours that will minimally be required.

II. TERMS AND CONDITIONS

A.1 Right to Audit. The Consultant agrees that the representatives of the City, including but not limited to the City Manager or Finance Director shall have access to, and the right to audit, examine, or reproduce, any and all records of the Consultant related to the performance under this Agreement. The Consultant shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that City has brought to the attention of the Consultant are resolved, whichever is longer. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.

A.2 Default. The Consultant shall be in default under the Agreement if the Consultant fails to fully, timely and faithfully perform any of its material obligations under the Agreement.

A.3 Termination - City. City may terminate this Agreement by providing written notice effective at least thirty (30) days in advance. In the event of a default by the Consultant, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) days, unless otherwise specified, after the date of such notice, unless the Consultant, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Consultant's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

A.4 Termination - Consultant. Consultant may terminate this Agreement by providing written notice effective at least thirty (30) days in advance.

A.5 Indemnity.

A.5.1 Definitions:

"Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

- (i) damage to or loss of the property of any person (including, but not limited to the City, the Consultant, their respective agents, officers, employees and sub-contractors, the officers, agents, and employees of such sub-contractors; and third parties); and/or
- (ii) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Consultant, the Consultant's sub-contractors, and third parties),

"Fault" shall include negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

A.5.2 The Consultant shall defend (at the option of the City), indemnify, and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims arising out of, incident to, concerning or resulting from the fault of the Consultant, or the Consultant's agents, in the performance of the Consultant's obligations under the Agreement. Nothing herein shall be deemed to limit the rights of the City or the Consultant (including, but not limited to, the right to seek contribution) against any third party who may be liable for an Indemnified Claim.

A.6 Claims. If any claim, demand, suit, or other action is asserted against the Consultant which arises under or concerns this Agreement, or which could have a material adverse effect on the Consultant's ability to perform thereunder, the Consultant shall give written notice thereof to the City within ten (10) days after receipt of notice by the Consultant. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to City and to the City Attorney, as set out below.

A.7 Notices. Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by any other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Consultant shall be addressed as follows:

City:

Consultant:

City of Lago Vista
Attention: City Manager
P.O. Box 4727
Lago Vista, TX 78645

With Copy to:

City Attorney
The Knight Law Firm, LLP
225 West Anderson Lane, Suite A-105
Austin, Texas 78752

A.8 Rights to Contractual Material. Material created, developed and/or submitted by the Consultant to the City in the performance of the services under this Agreement shall become property of the City. Any portions of such material claimed by the Consultant to be proprietary must be clearly marked as such. Any material given to Consultant to facilitate the rendition of services remains the property of the City and shall be returned after such services are completed. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.

A.9 Confidentiality. In order to provide the deliverables to the City, the Consultant may require access to certain of the City’s and/or its licensors’ confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, “Confidential Information”). The Consultant acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Consultant (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction; provided the Consultant promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

A.10 Conflict of Interest Prohibition. Consultant shall not, during the Term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or

participate in any business venture conducting business in the corporate limits of the City except for stock ownership in a company whose capital stock is publicly held and regularly traded on any stock exchange, without the prior written approval of the City Manager. For and during the Term of this Agreement, Consultant shall, except for a personal residence or residential property acquired or held for future use as Consultant's personal residence, not invest in any other real estate or property improvements within the City, without the prior written consent of the City Manager.

A.11 Independent Consultant. The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Consultant's services shall be those of an independent Consultant. The Consultant agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

A.12 Waiver. No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Consultant or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

A.13 Modifications. The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Consultant invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

A.14 Interpretation. The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

B. Miscellaneous Provisions

B.1 Should any dispute arise under this Agreement that culminates in litigation, the venue of that suit shall be in a court of competent jurisdiction sitting in Travis County, Texas. The court shall apply the laws of the State of Texas in construing and interpreting the terms of this Agreement.

B.2 The City and the Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives of the other party to the Agreement and to the partners, successors, assigns, and legal representatives of the City with respect to all covenants of the Agreement. Neither the City nor the Consultant shall assign the Agreement without the written consent of the other.

B.3 The Agreement represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may only be amended in writing, signed by both the City and the Consultant.

B.4 Title and paragraph headings are for reference and are not a part of the Agreement.

B.5 In the event of conflict between the terms of the Agreement and any terms or conditions contained in any attached documents, the terms of the Agreement shall rule.

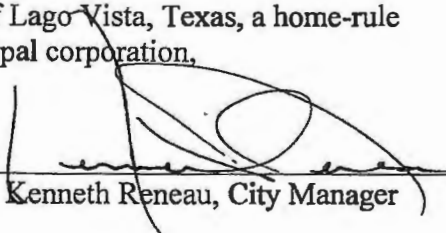
B.6 Should any provision, paragraph, sentence, word or phrase contained in the Agreement be determined to be invalid, illegal or otherwise unenforceable, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with law, or else the same shall be deemed severable. In any event, the remaining terms and provisions of the Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement effective as of the date first written above.

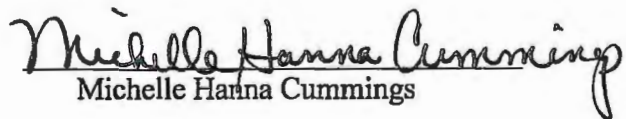
CITY

City of Lago Vista, Texas, a home-rule municipal corporation,

By: _____

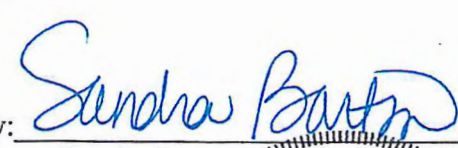

Kenneth Reneau, City Manager

CONSULTANT


Michelle Hanna Cummings

ATTEST:

By: _____


Sandra Barton, City Secretary

