

CITY OF  
**MANOR**

EST.  1872

TEXAS

**REQUEST FOR PROPOSAL FOR  
COMPREHENSIVE PLAN**

**RFP # 2020-21**

**DUE DATE: OCTOBER 23, 2020 at 2:00 p.m. C.S.T**

**CITY OF MANOR, TEXAS  
105 East Eggleston Street  
Manor, TX 78653  
(512) 272-5555 ext. 5  
[www.cityofmanor.org](http://www.cityofmanor.org)**

## Section I: General Information

### Article 1. City Overview

Located in east Travis County and situated along US Highway 290 East, the City of Manor has experienced rapid growth over the past twenty years. Since incorporation in 1913 Manor has grown from 282 acres to 6,228 or 10 square miles today. In that time the population has increased from 827 people to an estimated 13,866 with almost all that growth occurring since the year 2000 when Manor's population was 1,204. Manor continues to attract new residents at an ever increasing rate, with new home permits expected to exceed 700 for the 19-20 FY and over 1,300 apartment units either under construction or in the permitting process.

With a feasibility study currently underway for the planned expansion of US Hwy 290 East as a continuation of the tolled Manor Expressway by the Central Texas Regional Mobility Authority as well as the re-routing and expanding of FM 973 North by the Texas Department of Transportation and the conversion of a freight line to a commuter rail line by Capital Metro, Manor's access to Austin and the Central Texas region is poised to be greatly enhanced and fuel even more growth in the coming decades.

### Article 2. Statement of Need

The City of Manor is seeking proposals from qualified, professional consultants who will assist the City in creating a comprehensive plan and policy framework for intelligent growth over a 30 year planning horizon ("RFP"). The consultant awarded this contract will have the primary responsibility of developing the Manor 2050 Comprehensive Plan document ("Comprehensive Plan" or "Plan") and will work in coordination with the City of Manor's Development Services Department, City Engineer, Public Works Department, and others as needed. The City does not currently have an adopted comprehensive plan.

### Article 3. Submission Information and Schedule

The City intends to award a single contract for this project. The proposal should address the consultant's capabilities for performing all aspects of the project development process while presenting specific project information and substantiating the consultant's methodologies and approach for completing the work requested.

**The official title for this project is:**  
Manor 2050 Comprehensive Plan

**Questions regarding the content of this proposal shall be submitted to:**

Assistant Development Services Director Scott Dunlop, AICP  
 105 East Eggleston Street  
 Manor, TX 78653  
 Phone: 512-272-5555 ext. 5  
 Fax: 512-272-8636  
 Email: [sdunlop@cityofmanor.org](mailto:sdunlop@cityofmanor.org)

### **Schedule of Important Dates**

Release of RFP to Vendors:	September 8, 2020
Advertisement Dates:	September 8, 2020 –October 9, 2020
Deadline for Questions and Inquires:	October 9, 2020
Proposal Submission Deadline:	October 23, 2020 at 2:00 p.m. C.S.T
Oral Interviews (if advanced):	November 2 – 6, 2020
Earliest Award by City:	November 18, 2020

### **Article 4. Preparation Cost**

The City shall not be responsible for proposal preparation costs, nor for costs including attorney fees associated with any (administrative, judicial, or otherwise) challenge to the determination of the highest ranked Proposer and/or award of contract and/or rejection of the proposal. By submitting a proposal each Proposer agrees to be bound in this respect and waives all claims to such costs and fees.

### **Article 5. Rules Governing Competition**

#### **Examination of Proposal**

Proposers should carefully examine the entire RFP, any addenda thereto, and all related materials and data referenced in the RFP. Proposers should become fully aware of the nature of the work and the conditions likely to be encountered in performing the work.

#### **Proposal Acceptance Period**

Award of this proposal is anticipated to be announced with thirty-one (31) calendar days, although all offers must be completed and irrevocable for ninety (90) days following the submission date.

#### **Confidentiality**

The content of all proposals and scoring sheets may be subject to confidentiality pursuant to the Texas Public Information Act (“Act”). After the award of the contract, all information related to proposals received may be subject to release pursuant to the Act.

#### **Proposal Format**

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of Proposer’s capabilities to satisfy the requirements of this RFP. Emphasis should be placed on

conformance to RFP instructions, responsiveness to RFP requirements, overall completeness, and clarity of content.

### **Signature Requirements**

All proposals must be signed. An officer or other agent of a corporate vendor, if authorized to sign contracts on its behalf; a member of a partnership; the owner of privately owned vendor; or other agent if property authorized by a Power of Attorney or equivalent document may sign a proposal. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

### **Proposal Submission**

Ten (10) copies of the finished and bound proposal and one (1) flash drive of the proposal must be received by the City of Manor, City Secretary no later than 2:00 p.m. C.S.T on Friday, October 23, 2020. All copies of the proposal must be under sealed cover and plainly marked with the project name.

### **Proposals shall be delivered or mailed to:**

The City of Manor,  
ATTN: City Secretary  
105 East Eggleston Street,  
Manor, Texas 78653

### **News Releases**

News releases pertaining to the award resulting from the RFPs shall not be made without prior written approval of the City's Development Services Department.

### **Disposition of Proposals**

All materials submitted in response to this RFP will become the property of the City of Manor. One copy shall be retained for the official files of the City and will become public record after award of the contract.

### **Modification/Withdrawal of Proposals**

A Proposer may withdraw a proposal at any time before the final submission date by sending written notification of its withdrawal, signed by an agent authorized to represent the agency. The Proposer may thereafter submit a new or modified proposal before the final submission date. Modifications offered in any other manner, oral or written, will not be considered. A final proposal cannot be changed or withdrawn after the time designated for the receipt, except for modifications requested by the City after the date of receipt and following oral presentations.

### **Oral Change/Interpretation**

No oral change or interpretation of any provision contained in this RFP is valid unless issued as a written addendum. A written addendum shall be issued when the City deems changes, clarifications, or amendments to proposal documents necessary.

**Late Submissions**

Proposals not received before the date and time specified will not be considered and will be returned unopened after recommendation of award.

**Rejection of Proposals**

The City of Manor reserves the right to reject any and all proposals, to waive irregularities in the submittal and evaluation process and to accept that proposal deemed what in its judgement is in the best interest of the City and/or the most advantageous to the City.

**Project Completion**

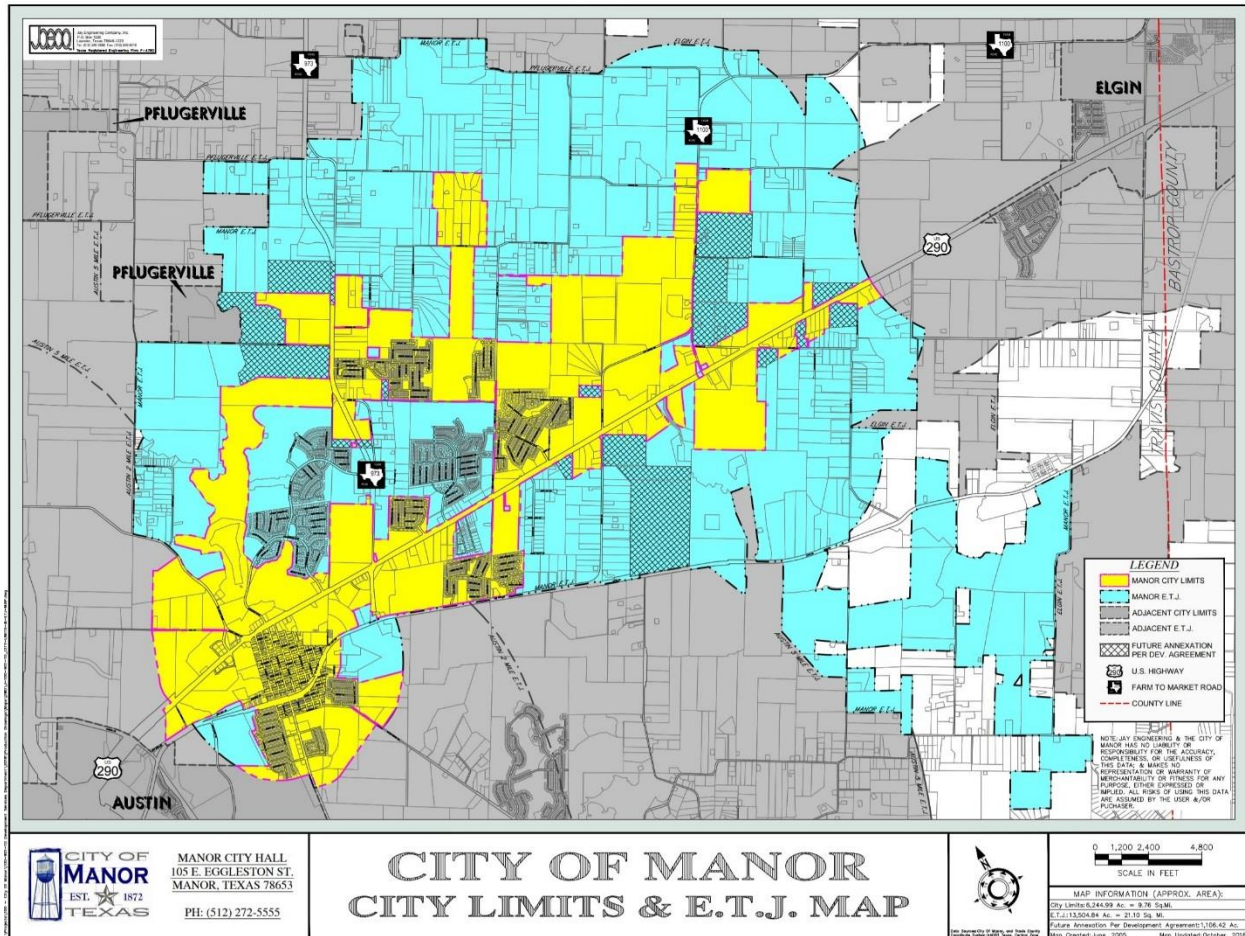
Based on a timeline provided in the submission and agreed upon by both the City and consultant who is awarded the contract.

## Section II: Scope of Work

### Article 1: Area of Project

The City of Manor and its extraterritorial jurisdiction (ETJ) currently extends along US Hwy 290 East from the City of Austin's eastern limits, roughly Parmer Lane, 7 miles to approximately Ballerstedt Road. The City and its ETJ extends 4 miles north along FM 973 North as well as FM 1100 and with the exception of Old Manor, the City does not extend south of Old Highway 20 but the ETJ extends Southeast across various tracts some 4 miles. See map below.

The City is primarily growing north and east with most projects being residential subdivisions. Limited commercial development is occurring along US Hwy 290 East and FM 973 North.



## Article 2. Expectation of Selected Consultant

Throughout the process the selected consultant will be expected to utilize their experience and drive the process. To achieve this goal, and utilize the experience of the selected consultant, the City of Manor will require the following expectations be met and identified within the consultant's proposal:

1. Initial meeting with City staff to review project timeline, schedule meetings and being the process of data acquisition.
2. Review all existing plans, maps, documents, data and other materials relevant to the project. The City will provide all available existing documentation to the selected consultant. The selected consultant will study, amend as needed, and consolidate applicable materials into the Plan.
3. Conduct meetings with key elected and appointed officials. The selected consultant will lead stakeholder outreach and participation efforts with City staff providing assistance where needed.

4. Plan and implement an extensive stakeholder and public outreach process using a range of methods to inform and involve stakeholders, citizen organizations and the general public.
5. Develop Plan goals, objectives, and implementation strategies based on technical data and public input.
6. Draft materials for review and comment by the City in accordance with a schedule at the beginning of the planning process.
7. Confirm the final Plan conforms to all Federal, State, and local codes.
8. Analyze consistency of current City ordinances and policies in relationship to the Plan goals and objectives.
9. Prepare draft document for public review and comment, and present to City boards, committees, commissions, and City Council as necessary.
10. Prepare final draft document and present to all associated meetings and public hearings for adoption of the Plan.
11. Provide at least weekly updates, primarily through email or telephone and occasionally in-person, to update City staff on project status, discuss issues and review drafts. Periodic written status reports and status presentations may also be required to the Planning and Zoning Commission and City Council.

### Article 3: Project Scope

1. **Infrastructure**  
Incorporate the current infrastructure in place and recommend goal, policy, and action items for future infrastructure to include Capital Improvements Plan update and service provision to recently annexed areas. Address growth management strategies as it relates to infrastructure, as well as projections for needed items.
2. **Traffic/Transportation**  
Review and update the City's 2014 Thoroughfare Plan to include projections for traffic management in relation to future developments of the City.
3. **Current and Future Land Use**  
Develop realistic population projections and build-out scenarios utilizing preferred land-use patterns for the City and ETJ. The build-out scenarios shall include land use projections, population densities, development phasing models, and infrastructure improvements as required. Review, analyze and provide the land use and development character goal, policy and action items of the Plan and refine as needed to account for shifting demographics and vision of the community.
4. **290 Corridor Plan, TOD Overlay Plan and Historic Overlay Plan**  
Specific focus shall be made to create a US Hwy 290 East corridor plan that provides for consistent and unified development along the corridor including current and future land uses, architectural standards, site design standards, landscaping, and signage.

Implementation policies to create an overlay zone shall be included for Capital Metro's Transit Oriented Development (TOD) Plan for the half-mile area around their proposed station area identified as the Green Line in the TOD Corridor Plan.

Objectives and action items to implement design standards for Manor's Historic District including current and future land uses, architectural standards, site design standards, landscaping, and signage.

**5. Facilities**

Review and analyze the needs for community facilities including a library, community center, pool, and athletic fields and courts based on population projections.

**6. Parks, Trails and Open Space**

Review and update the City's Hike and Bike Trails Master Plan. Develop a parks and open space plan for the City and ETJ as well as reviewing the City's parkland dedication requirements to align with goals of the parks and open space plan.

**7. Economic Development and Downtown Revitalization Plan**

Review and update as necessary the city's economic development incentives including ordinances, PID policy, and Opportunity Zone and develop an Economic Development Plan.

Provide strategies and policies for a Downtown Revitalization Plan that spurs economic activity in the historic downtown area including various funding methods, land use changes, and streetscape enhancements.

**8. Sustainability**

Focus should be made on integrating sustainable practices throughout the Plan elements. Additionally, goals or policy recommendations should be put forth that make the city more sustainable and climate change resilient such as building standards, renewable energy, stormwater management, water conservation, and waste minimization.

**9. Branding**

Create a branding scheme to create an identity for the City. Specify the implementation strategies, key factors, and projects to form a full identity for the future. Items included may be logos, wayfinding, entry monument signs, event recommendations, and city slogan.

## Article 4: Public Participation

The City of Manor considers public participation essential to a successful Comprehensive Plan. The Plan process shall be structured to efficiently maximize citizen involvement and participation.



The selected consultant shall be responsible for designing a public engagement strategy, to include an online platform, which incorporates effective and innovative participation techniques and encourages participation throughout the development of the Comprehensive Plan. Participation by residents, businesses, agencies, organizations, all city departments, and public officials is a must throughout the planning process. The proposed public engagement strategy must include the latest technologies and be creative, inclusive, efficient and reliable with the goal of channeling this input into realistic alternatives for consideration by the public. The selected consultant team must demonstrate extensive expertise and experience in the public participation and facilitation process. The selected consultant team must have strong leadership and creativity to provide clear direction in participation techniques that result in inclusive and timely decisions.

## Section III: Proposal and Submission Requirements

The City of Manor requires comprehensive responses to every section within this RFP. To facilitate the review of the responses, Proposers shall follow the described proposal narrative. The intent of the proposal narrative requirements is to expedite review and evaluation. It is not the intent to constrain Proposers with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review and evaluation.

### Article 1: Proposal Narrative

All proposal information shall be presented in a single-bound volume that has been checked sufficiently to ensure completeness and accuracy of detail. Proposals that do not comply with the instructions in this RFP will not be accepted. It is mandatory that the proposal contains the following 7 items and that is be presented in the following order:

1. Cover
2. Title Page (1 page)
3. Letter of Transmittal (1 page)
4. Table of Contents (1 page)
5. Core Content (6 pages maximum)
  - a. Consultant Project Approach
  - b. Key Project Personnel
  - c. Past Project Performance
  - d. Rates and Expenses
  - e. References
6. Supporting Attachments (10 pages maximum)
7. The City intends to execute a contract with the successful Proposer that substantially includes the general terms and conditions attached hereto in Exhibit A.
  - a. The Proposer shall include all objections, deletions to the general terms and conditions, or required additions to the contract sought by Proposer. The number of

additions, deletions, modifications, and objections to the general terms and conditions will be considered in the City's evaluation of the proposals.

### **Title Page**

Show the RFP title being proposed on, the name of your firm, address, telephone numbers, name of a contact person and date.

### **Letter of Transmittal**

1. Identify the RFP project for which the proposal has been prepared.
2. Briefly state your Firm's understanding of the services to be performed and make a positive commitment to provide services as specified.
3. Provide the name(s) of the person(s) authorized to make representations for your firm, their titles, address, and telephone numbers.
4. A corporate officer or another individual who has the authority to bind the firm must sign the letter. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

### **Table of Contents**

Clearly identify the materials by Section and Page Number.

### **Details of Core Content**

1. **Recent Comprehensive Planning Experience**  
Include a brief statement concerning the recent relevant experience of the persons from your firm and each sub-consultant who will be actively engaged in the proposal effort. Do not include firm experiences unless individuals who will work on this project participated in that experience. If the consultant proposal includes sub-consultants, a list of such consultants shall be submitted, and qualifications and experience stated for each sub-consultant.
2. **Consultant Work Approach**  
The proposal must include a brief description of the Proposer's overall approach to comprehensive planning and any unique capabilities the firm can bring to the project. Also include information addressing how the Proposer plans to provide project management, quality assurance, contract deliverables, budget and cost control, schedule control, and internal/external coordination for this project.
3. **Key Project Personnel**  
It is recommended personnel have a thorough knowledge and understanding of Municipal Government operations to provide perspective related to comprehensive planning analysis and recommendations.

Specific background information for key individuals who will be assigned to the project must be included. The background information on these individuals should emphasize their work experience relative to project requirements, current projects, and availability. The proposed key personnel must be the personnel assigned to the project.

It is intended that the personnel assigned will carry this project to its conclusion. If for unforeseen reasons key personnel can no longer contribute to the discipline specialties for which they have been selected, the selected consultant may petition the City in writing within thirty (30) days of any changes of personnel that are included in this statement and the addition to the selected consultant's staff of personnel who may contribute to the discipline specialties for which the key personnel has been selected.

The City of Manor reserves the right to approve all personnel changes, as well as reserves the right to cancel any task request in effect should it determine that the proposed personnel are not available or assigned to the task ordered.

4. Rates and Expenses

Provide a proposed fee schedule broken down by task. Express your administrative fee in a lump sum not-to-exceed maximum amount and separate price for travel and related expenses (if applicable). Firms shall incur no travel or related expenses chargeable to the City without prior approval by an authorized City representative. Proposers may submit proposals on any task or combination of tasks, and may propose alternative payment methods (ie: hourly rates). However, expenses not specifically listed will be considered. The actual contract amount will be negotiated after the consultant has been selected and the scope of work finalized.

5. Past Project Performance

Information is to be provided on the firm's performance on past projects (include City projects if applicable), regarding the project management items identified. Provide the names, addresses, current telephone numbers, and brief project description of three past or current clients who can comment on aspects of your work relevant to this proposal.

### **Supporting Attachments**

Attach only information pertinent to the project being proposed on and that will provide reviewers clear and concise insights into your firm's capabilities.

Include a timeline for estimated completion dates from start to finish with a summary of key benchmarks.

### **Contract General Terms and Conditions**

Include all objections, deletions, or required additions to the general terms and conditions sought by Proposer to the general terms and conditions to the contract contained in Exhibit A of this RFP.

## **Section IV: Evaluation Criteria and Selection Process**

Firms will be ranked using the points available for each RFP criterion. The criterion categories and points available for each are as follows:

- 40% Recent Comprehensive Planning Experience and Past Performance
- 25% Rates and Expenses
- 20% Consultant Project Approach
- 10% Key Project Personnel
- 5% Conformance to RFP Instructions and Contract General Terms and Conditions Changes or Additions

A committee of individuals representing the City of Manor shall evaluate the proposals and will rank the proposals as submitted.

The City of Manor reserves the right to award a contract solely on the written proposal. The City also reserves the right to request oral interviews with the highest ranked firms. The purpose of the interviews with the highest ranked firms is to allow expansion upon written responses. The City reserves the right to request additional questions to be answered during the interviews, determine the format and content of the interviews, and establish the maximum number of people who attend the interview from each firm. If interviews are conducted, a maximum of three firms will be shortlisted. The Consultant's project manager identified in the proposal will be required to attend the interviews. By submitting a proposal, it is understood that the Proposers may not change (add or delete) personnel for interviews from those listed in the proposals without written consent from the City.

A second score sheet will be used to score those firms interviewed. If oral interviews are conducted, the final selection will be based on the total of all evaluators' scores achieved on the second rating. The highest ranked Proposer(s), after the second scoring, if performed, may be invited to enter final negotiations with the City for the purpose of Contract award.

## Section V: Contract Negotiation Process

The highest ranked Proposer(s) may be invited to enter Contract negotiations with the City of Manor. If an agreement cannot be reached with the highest ranked Proposer, the City shall notify the Proposer and terminate negotiations. The second highest ranked Proposer may be contacted for negotiations. This process may continue until successful negotiations are achieved. However, the City reserves the right to terminate negotiations with any Proposer should it be in the City's best interest. The City of Manor reserves the right to reject all proposals submitted.

**Exhibit A: Contract General Terms and Conditions**



## CONTRACT GENERAL TERMS AND CONDITIONS

### A. Scope of Services

The general Scope of Work ("SOW") for this Contract is a Comprehensive Plan that encompasses the present conditions of the City as well as projects that it will include in the coming years ("Project"). The specific SOW shall consist of the following documents, attached hereto and incorporated herein by this reference:

- Request for Proposal ("RFP") issued by the City on [date];
- Any Addenda to the RFP issued by the City, bearing the date(s) of [date(s)];
- The Consultant's Response to RFP, dated [date]; and
- Additional services requested by the City, listed in Exhibit \_\_\_\_.

The SOW shall be governed by the above-identified documents, except as may be amended by the issuance of change orders pursuant to this Contract.

### B. Payment

Consultant agrees to accept the fee sum of \$ \_\_\_\_\_ based on the rates provided in Exhibit \_\_\_\_, as full payment for the performance of the SOW services contemplated under this Contract, which sum shall be increased or decreased only by the amount representing the associated cost of any and all change orders approved as provided in this Contract. The City shall render payment based on key benchmarks as approved in Exhibit \_\_\_\_\_. Invoices shall be submitted to the City once a month. Payment shall be made by the City within thirty (30) calendar days of the City's receipt of the invoice. Upon termination of this Contract, payments under this section shall cease, provided, however, that Consultant shall be entitled to payments for work performed in accordance with this Contract before the date of termination and for which Consultant has not yet been paid.

### C. Change Orders

The City may from time to time request changes in the scope and focus of the activities, investigations, and studies conducted or to be conducted by Consultant pursuant to this Contract, provided, however, that any such change that in the opinion of Consultant or the City Manager varies significantly from the SOW set out herein and would entail an increase in cost or expense to the City shall be mutually agreed upon in advance in writing by Consultant and the City Manager.

1. Any material change to the SOW contemplated under this Contract shall be accomplished only as provided in this section.
2. When the original contract amount plus all change orders is equal to or less than \$\_\_\_\_\_, the City Manager or his designee may approve the written change order provided the change order does not exceed \$\_\_\_\_\_, and provided the sum of all change orders does not exceed 25% of the original contract amount. When a change order

exceeds \$ \_\_\_\_\_ or when the sum of all change orders exceeds 25% of the original contract amount, the City Council must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding \$50,000 or any additional change orders totaling 25 percent following such City Council approval, must be approved by City Council.

3. Should either party determine that a material change to the SOW is necessary or advisable, the particular change shall be set forth in a writing entitled "Change Order, [date]," and shall bear the signatures of an authorized representative of each party. Upon execution by both parties of any such change order, the SOW shall be deemed modified and incorporated by this reference into this Contract as if set forth fully herein. The City will retain all original change orders approved pursuant to this section and Consultant shall be provided a copy for its files.
4. Any request by the Consultant for an increase in the SOW and an increase in the amount listed in Section B. of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City with respect to any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the SOW included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

#### **D. Time of Performance**

1. Consultant's SOW services shall be completed as presented in Exhibit \_\_\_\_ on or before \_\_\_\_\_ [date]. Consultant will undertake the SOW services in a thorough and workmanlike manner in every respect and in compliance with the applicable standard of care for such professionals.
2. The SOW services will be considered complete when all services described in the SOW have been finished, and the final work product materials have been accepted by the City.

#### **E. Independent Consultant**

1. In all activities or services performed hereunder, the Consultant is an independent Consultant and not an agent or employee of the City. The Consultant, as an independent Consultant, shall be responsible for the final product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment and labor required for the execution of the work on the project. The Consultant shall have ultimate control over the execution of the work under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and sub-contractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the

Consultant's sub-contractors except to the limited extent provided for in this Contract. Consultant shall be liable for any misrepresentations. Any negotiations by the Consultant on the City's behalf are binding on the City only when within the SOW contained herein and approved by the City.

2. The City's Project Manager for all purposes under this Contract is the City Manager, or his designee, and all communications from Consultant to City arising out of this Contract shall be directed to the City Manager's attention, or his designee.

#### **F. Authorization**

1. The City shall direct Consultant to commence work on the Project by sending Consultant a "letter of authorization" to begin work on the Project.
2. Upon receipt of the letter of authorization to begin work on the implementation of the Project, Consultant shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City's staff to coordinate Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City.
3. Consultant shall consult with the City and may in some limited circumstances, act as the City's representative, but it is understood and agreed by the parties that for all purposes related to this Contract, Consultant shall be an independent Consultant at all times and is not to be considered either an agent or an employee of the City.

#### **G. Representations and Warranty**

1. The Consultant has familiarized itself with the nature and the extent of this Contract, the SOW, the locality, all characteristics of the City considering the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the SOW services, or apply in any manner whatsoever to the work.
2. As an experienced and qualified professional, Consultant warrants that the information provided by Consultant reflects high professional and industry standards, procedures, and performances and has the personnel and resources to complete the Project within the time frame set forth herein. Approval or acceptance by the City of any of Consultant's work product under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Consultant, its employees, agents, or associates for the exercise of skill and diligence necessary to fulfill Consultant's responsibilities under this Contract. Nor shall the City's approval or acceptance be deemed to be the assumption of responsibility by the City for any defect or error in the work products prepared by Consultant, its employees, associates, agents, or sub-contractors.



3. Consultant shall keep the City informed of the progress of the work and shall guard against any defects or deficiencies in its work.
4. Consultant shall be responsible for using due diligence to correct errors, deficiencies or unacceptable work product. Consultant shall, at no cost to the City, remedy any errors, deficiencies or any work product found unacceptable, in the City's sole discretion, as soon as possible, but no later than fifteen (15) calendar days after receiving notice of said errors, deficiencies, or unacceptable work product.
5. Any and all of Consultant's work product ("Work Product") hereunder considered work(s) made by Consultant for the City and shall be the exclusive property of the City. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all records, notes, data, memorandum, models, and equipment of any nature that are within Consultant's possession or control and that are the City's property or relate to the City or its business. If by operation of law, any of the Work Product, including all related documents, is not owned in its entirety by the City automatically upon creation thereof, then Consultant agrees to assign, and hereby assigns, to the City and its designees the ownership of such Work Product, including all related property rights. "Work Product" shall mean any writings (including excel, power point, emails, etc.), programming, documentation, data compilations, reports, and any other media, materials, or other objects produced as a result of Consultant's work hereunder or delivered by Consultant in the course of performing that work.
6. Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant's employees during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant's knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.
7. Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this section of the Contract.

## **H. Indemnification and Release**

1. Indemnity
  - a. To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City, its Council members, officials, officers, agents, employees, and volunteers (separately and collectively referred to in this paragraph as "Indemnitee") from and against all claims, damages losses and expenses

(including but not limited to attorney's fees) arising out of or resulting from any negligent act, error or omission, intentional tort or willful misconduct, intellectual property infringement or breach of contract including failure to pay a sub-contractor, or supplier occurring in the course of performance of professional services pursuant to this Contract by Consultant, its employees, sub-contractors, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. **IF THE CLAIMS, ETC. ARE CAUSED IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARATIVE BASIS, AND ONLY FOR THE AMOUNT FOR WHICH CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.**

- b. To the fullest extent permitted by law, Consultant agrees to defend the Indemnitees where the indemnifiable acts listed above occur outside the course of performance of professional services (i.e. non- professional services) and the claim is not based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, employee, or other entity over which the governmental agency exercises control, other than the Consultant or Consultant Parties.
  - c. It is mutually understood and agreed that the indemnification provided for in this section shall indefinitely survive any expiration, completion or termination of this Contract.
  - d. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with tile requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.
2. Release. The Consultant releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this

release shall apply regardless of whether such loss, damage, injury, or death was caused .in whole or in part by the City, any other party released hereunder, the Consultant, or any third party.

## **I. Insurance**

1. Consultant shall not commence work under this Contract until it has presented Certificates of Insurance as required below, confirming it has obtained all insurance and bonds required by this section and with the minimum insurance coverage as follows:
  - a. Workers' Compensation: statutory limits.
  - b. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations.
  - c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services.
  - d. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000).
2. The policies required above, except for the Workers' Compensation insurance, shall be endorsed to include the City as an additional insured. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.
3. Certificates of Insurance shall be completed by the Consultant's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

4. Failure on the part of the Consultant to procure or maintain policies as provided herein shall constitute a material breach of contract upon which the City may immediately terminate this Contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

## **J. Termination**

1. At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Consultant, in writing, who shall cease work immediately. Consultant shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Consultant for the services properly performed and expenses incurred prior to the date of termination.
2. No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City or because of any breach of contract by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

## **K. Form 1295**

Texas law and the City requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the City complete the on-line of Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Consultant hereunder, Consultant shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

## **L. Miscellaneous Provisions**

1. This Contract is to be governed by and shall be construed in accordance with the laws of the State of Texas. Proper venue for any dispute or litigation shall be only in Travis County, Texas.
2. This Contract and all rights and obligations contained herein may not be assigned by Consultant without the prior written approval of the City. However, Consultant shall have the right to employ such assistance as may be required for the performance of the project, including the use of subcontractors, which employment shall not be deemed an assignment of the Consultant's rights and duties hereunder.
3. In the event of litigation enforcing or interpreting the terms of the within Contract, the City shall be entitled an award of reasonable attorney fees and all

costs of suit, including expert witness fees, court reporter fees and similar litigation expenses. Nothing in this section shall be deemed a waiver of any constitutional or statutory protections afforded to municipal governments under Texas law.

4. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.
5. Notices shall be mailed to the addresses designated and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City:

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Consultant:

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6. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
7. This Contract represents the entire and integrated agreement between the City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by authorized representatives of each party.
8. No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. No waiver of any provision of the Contract shall be of any force or effect, unless such waiver is in writing, expressly stating to be a waiver of a specified provision of the Contract and is signed by the party to be bound thereby. In addition, no waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition and shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with the Contract or any portion or provision or right under the Contract.
9. This Contract and the rights, obligations and liabilities created hereunder shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors, and assigns of each of the parties hereto, but no rights, obligations, or liabilities hereunder shall be assignable or delegable by CONSULTANT without the prior written consent of the CITY. CITY may assign or delegate the rights, obligations, or liabilities created hereunder to its successor in interest without the consent of CONSULTANT.

10. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
11. All obligations by either party which expressly or by their nature survive the expiration or termination of this Contract shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature or within one year of termination, provided however that any obligations regarding protecting confidential information shall continue in perpetuity.
12. The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Contract, including the making of any and all payments due hereunder.
13. This Contract has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Contract.
14. To the extent this Contract constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Consultant represents that neither Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant (i) boycotts Israel or (ii) will boycott Israel through the term of this Contract. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.
15. To the extent this Contract constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Consultant represents that Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.