

REQUEST FOR QUALIFICATIONS

FOR

**Comprehensive Americans with Disabilities Act (ADA)
Self Evaluation and Transition Plan Project**

February 5, 2020



ISSUE DATE: February 5, 2020
TO: Engineering Firms
FROM: Patricia Davis, City Engineer
City of Pflugerville
SUBJECT: Request for Statements of Qualifications for Consulting Engineering Services: Comprehensive Americans with Disabilities Act (ADA) Self Evaluation and Transition Plan Project

The City of Pflugerville (City) is requesting a Statement of Qualifications (SOQ) from interested and qualified consulting engineering firms for Professional engineering services to assist the City in the self-evaluation of relevant City facilities, parks, parking lots, public right-of-ways, services, programs and activities, as well as to develop a transition plan to be in compliance with the American with Disabilities Act (ADA). Enclosed for your consideration is a Request for Statement of Qualifications (RFQ).

To be considered for this project, your firm must meet the qualifications and satisfy the requirements set forth in the RFQ. If you are interested in being considered, please **submit your SOQ by 4 p.m., Friday, March 6, 2020**, to the person listed below. The submission date for questions, clarifications, or **requests for general information is 2 p.m., Monday, March 2, 2020**. Any requests received after this date will be returned and not addressed. Note that all questions, clarifications, or request for general information are to be **in writing via email** or other mail carrier to the City's Project Manager.

A committee consisting of City of Pflugerville staff will rate the SOQs using the evaluation criteria developed for this project. Said evaluation criteria are attached to this RFQ. The selection committee may interview one or more firms to further evaluate qualifications. The selection committee will present their recommendations to the City Council who will select the consultant for this project. During the evaluation process, the City of Pflugerville reserves the right, where it may serve the City of Pflugerville's best interest, to request additional information or clarifications from responders, or to allow corrections of errors or omissions.

Review of Proposals:

1. The committee will review the SOQ's at its earliest convenience after the submittal deadline date.
2. The SOQ's will be reviewed and rated relative to the evaluation criteria established for this project. Said evaluation criteria are attached to this RFQ.
3. If necessary, the committee will invite one or more responsive firms to make a presentation before the committee.
4. After completing the evaluation process, the committee will recommend the firm deemed the most qualified to City Council for consultant selection.
5. City Council will consider the committee recommendation at its earliest convenience.
6. Following consultant selection, de-briefing meetings with City staff will be available only

Any questions and correspondence should be directed to:

Ms. Patricia A. Davis, M.S.C.E., P.E.
City Engineer
City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691-0589
(512) 990-6409
Fax: (512) 989-1052
projects@pflugervilletx.gov

Contact regarding this project with any City of Pflugerville personnel or officials other than Ms. Patricia Davis or her designated representative after the issue date of this RFQ will be grounds for removal of the firm from consideration.

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REQUEST FOR STATEMENT OF QUALIFICATIONS
City of Pflugerville
Development of Comprehensive Americans with Disabilities Act (ADA)
Self-Evaluation and Transition Plan

I. INTRODUCTION

A. General Information

The City of Pflugerville (CITY) is requesting SOQs from qualified consulting engineering firms capable of providing professional engineering services to assist the City in the self-evaluation of all relevant City-owned facilities and rights-of-way and to prepare an Americans with disabilities Act (ADA) Transition Plan document for the following project:

Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan Project

There is no expressed or implied obligation for the City of Pflugerville to reimburse responding firms for any expenses incurred in the preparation of a SOQ in response to this request. In no event will the City or any of its respective agents, representative, consultants, directors, officers, or employees be liable for, or otherwise be obligated to reimburse, the costs incurred in preparation of any SOQ, or any other related costs. The prospective firms shall be fully responsible for all costs incurred in the preparation and/or presentation of the SOQ submittals. The SOQ submittals will become the property of the City upon submission and all proposals shall be subject to the Texas Public Information Act unless the respondent clearly and prominently identifies a particular submittal item as proprietary and said item unequivocally qualifies for this exception under the Act as determined by the Texas Attorney General in accordance with the law. The City reserves the right to increase or decrease the scope of work related to this project as outlined in this RFQ after a firm is selected to accommodate changes in the needs of the City and serve the best interests of the City. The City further reserves the right to terminate this process and to cancel or modify this solicitation at any time.

The following information is offered as the overall scope of work. The intent of this Request for Qualifications (RFQ) is to provide information so that RESPONDENT can define the level of expertise, experience, personnel and approach necessary to perform the required services in a timely, cost-effective and professional manner.

II. Scope of Services:

The purpose of this project is to determine if the City of Pflugerville is in reasonable compliance with the ADA with regard to City-owned facilities, public rights-of-way, programming, and communications. The development of an acceptable ADA Transition Plan is expected to be completed and provided to the City and shall be in sufficient detail to satisfy Federal requirements. In order to achieve compliance, this project will identify those improvements necessary and include a scope of work and cost estimate. In addition, this project will establish whether the City's current standards and codes should be updated with regard to ADA compliance. Finally, this project will establish long-range goals and objectives for the City to maintain an effective program of accessibility to City-owned facilities and rights-of-way (ROW).

The City of Pflugerville will require the selected firm(s) to:

- i. Assist City staff in identifying all necessary documents and materials to conduct a self-evaluation and audit process. This includes meeting with various City Departments.
- ii. Coordinate support to facilitate community outreach with stakeholders. This may be achieved with workshops or the formation of an advisory committee or both.
- iii. Conduct a review and evaluation of City policies, facilities, public ROW, and activities and programs to identify issues which may be discriminatory to people with disabilities. The identified deficiencies will be categorized by priority and the consultant will provide a detailed report and cost estimate for use in developing both immediate and long-range Capital Improvement Program (CIP) project planning.
- iv. Prepare a final report, considered the Transition Plan, listing all non-compliant policies, facilities, ROW, and programs. The consultant will formulate solutions for infrastructure and make recommendations for revised or new policies. The Transition Plan must be submitted in a format that meets the current industry ADA accessible format.
- v. Assist City staff to develop the framework for an actively managed tracking system compatible with our new asset management software and GIS database.
- vi. Prepare and present findings at City Council work session and/or meeting for City Management to clarify information and finalize process.

Technical Requirements:

Database and GIS:

The City of Pflugerville used the Cityworks asset management system for several types of infrastructure assets. GIS connectivity would be achieved through Cityworks. Database solutions not involving the Cityworks platform must be based on a Microsoft platform (Windows Server, MS SQL Server, Office, Sharepoint, etc.) with a web interface. Custom desktop deployed client solutions will not be considered. GIS connectivity will be required to ArcGIS Version 10.

CAD Requirements:

All CAD drawings produced for this project (revised standards, etc.) shall be in Autodesk 2018 version (minimum).

III. PROPOSED SCHEDULE

RFQ Release Date	February 5, 2020
Deadline for Questions	March 2, 2020
Responses to Questions Posted	March 3, 2002
SOQ Due Date	March 6, 2020
Respondent Selection	April 14, 2020
Contract Execution/Notice to Proceed	April 21 2020
Completion and Deliverables	November 20, 2020

IV. SUBMISSION OF STATEMENTS OF QUALIFICATIONS

Interested and qualified firms or teams are invited to submit one (1) original, four (4) copies and one (1) CD or flash drive of materials that demonstrate their experience in performing a project of this scale and complexity. Provide a list of references from clients, funding agencies, governmental units or partners worked with. The SOQ shall be submitted by a lead firm but may contain services from sub consultants. Documentation should be limited to 15 single sided pages and include the below items. Statement of Interest Letter and Resumes do not count in the 15 page limit.

- A. Item 1: City is interested in the experience of the Project Manager, Project Principal and the firm's projects similar to the project described in this solicitation. Project Manager and Project Principal must be employed by the prime firm and may be the same individual. List the location of the offices proposed to work on the project as well as contact information and who is to be the sole agent for contact with the City for this project.
- B. Item 2: Prime firm and sub consultants must have adequate and experienced current staff (including professionals registered in applicable fields, other professionals, and technicians) to competently and efficiently perform the work. Provide detail of the firm's qualifications as well as aspects of each firm that will benefit this project if selected. Prime Firm and sub consultants must commit that staff proposed in this submittal would be available for the proposed work. Specific projects relevant to this assignment with dates, outcomes, clients, and specific references that could comment on the quality of the work should be identified. At least two, and no more than five, references of directly relevant work must be provided from the last five years. Development of ADA Transition Plans or other ADA compliance-related projects can also serve as relevant work experience. Subconsultants on the project team for this assignment may not be references for the principal firm submitting qualifications for this assignment. The results of any reference checks will be provided to the evaluation committee and used when scoring the written qualifications.
- C. Item 3: City requires a statement, no longer than one page, which characterizes and defines your firm's experience and knowledge of the requirements of Title II of the 1990 Americans with Disabilities Act and/or development of ADA evaluations. The statement should briefly describe how your expertise and experience will contribute to this project.
- D. Item 4: the Consultants' understanding and approach to the project is an important aspect of the RFQ process. The Consultant should provide a clear and concise understanding of the project based on the information given as well as project goals and requirements. The proposer should explain their plan development process including their proposed strategy for completing the tasks identified in the scope. Describe experience with creative approaches for public outreach and availability to manage this process. Project manager must be licensed in the state of Texas at the time of submittal.

Submittals shall EITHER be mailed to:

Ms. Patricia A. Davis, M.S.C.E., P.E., City Engineer
C/O Sabrina Schmidt
City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691-0589

OR submittals shall be delivered to:

Ms. Patricia A. Davis, M.S.C.E., P.E., City Engineer
C/O Sabrina Schmidt
City of Pflugerville
100 East Main Street, Suite 100
Pflugerville, TX 78660

All submittals must be received no later than 4 p.m., Friday, March 6, 2020.

II. ADDITIONAL MATERIALS

Any information or material provided beyond that requested in this RFQ may not be considered by the City.

**EXHIBIT A: PROFESSIONAL SERVICES CONSULTANT SELECTION
 EVALUATION CRITERIA**

The following is a description of items to receive consideration in the evaluation of responses for providing professional engineering/architectural services to the City of Pflugerville. Following each description are the evaluation points associated with the item. TOTAL POSSIBLE POINTS EQUALS 100 (plus 25 points for interviews, if conducted). Wherever used, "prime firm" denotes a single firm or a joint venture responding as the prime consultant. Wherever used, "page" refers to single-sided, single spaced, 10-point minimum font printed 8-1/2 x 11-inch pages. The prime firm shall perform the largest share of the assignment (on an estimated percentage of total agreement basis). Responses failing to show the prime firm performing the plurality of the services shall be rejected as non-responsive. **Limitations on volume of requested information apply equally to single firms and joint ventures regardless of the number of firms partnering in the joint venture. Responses with excess volume or which do not include information for the evaluation of all consideration items may not be thoroughly reviewed or may be rejected as non-responsive.**

Consideration Item 1: <u>Experience of Project Manager and Project Principal (Past 10 Years)</u> <i>(Project Manager – 20 points; Project Principal – 10 points)</i>
City is interested in the experience of the Project Manager and Project Principal, on projects similar to the project described in this solicitation. Points will be awarded as indicated above. Only one individual per job responsibility should be designated. Project Manager and Project Principal must be employed by the prime firm and may be the same individual. Project Manager must be licensed as a professional engineer in the State of Texas at the time of submittal. List no more than five (5) projects meeting these criteria which have been completed in the past ten (10) years for each individual.
20 Points Maximum

Consideration Item 2: <u>Experience and Availability of Proposed Staff</u>
Prime firm and subconsultants must have adequate and experienced current staff (including professionals registered in applicable fields, other professionals, and technicians) to competently and efficiently perform the work. Prime firm and subconsultants must commit that staff proposed in this submittal would be available for the proposed work. City may desire to visit team's business addresses on a regular basis to follow progress of the work. A. The results of any reference checks will be provided to the evaluation committee and used when scoring the written qualifications.
20 Points

Consideration Item 3: <u>Prime and Subconsultant Firm's Comparable Project Experience (past 5 years)</u>
City is interested in the prime and subconsultant firm's history and success with projects of similar programs, budgets, and/or clients as the project described in this solicitation. List no more than five projects meeting these criteria which have been completed in the past five years. In addition, City may consider history of firm in complying with project programs, schedules, and budgets on previous City projects. Areas of subconsulting which will be evaluated are identified in the project description.
20 points

Consideration Item 4: Prime Firm's Statement for Experience and knowledge

The City is interested in the prime firm's specific requirement and guidelines based on experience and knowledge of the proposed scope of services: requirements of ADA Act of 1990 and how the experience is relevant to this project.

20 points

Consideration Item 5: Team's Structure and Project Approach

City is interested in team's organizational structure, their understanding of the project issues and their approach to the project. Identify project leadership, reporting responsibilities, how prime firm will interface with City's project manager and the sponsoring department, and how subconsultants will work within the management structure. Describe any significant project issues and the team's approach in addressing those issues.

20 Points Maximum

Consideration Item 6: Interview (Optional)

The City may determine that it is necessary to interview short-listed firms prior to making a recommendation to the City Council. Generally, staff may interview the top firms based on the results of the Evaluation Committee.

25 Points Maximum

REFERENCES

Please list three (3) references of current or recent past customers who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this RFQ.

THIS FORM MUST BE RETURNED WITH YOUR RFQ

REFERENCE ONE

Government/Company Name _____

Address _____

Contact Person and Title _____

Phone _____ Email Address _____

Contract Period _____ Scope of Work _____

REFERENCE TWO

Government/Company Name _____

Address _____

Contact Person and Title _____

Phone _____ Email Address _____

Contract Period _____ Scope of Work _____

REFERENCE THREE

Government/Company Name _____

Address _____

Contact Person and Title _____

Phone _____ Email Address _____

Contract Period _____ Scope of Work _____

**PROFESSIONAL SERVICES AGREEMENT
FOR
<PROJECT NAME>**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and [REDACTED] (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Manager” shall mean the City Manager and/or his designee.

II. TERM

2.1 This agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in [REDACTED] which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by

Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of Pflugerville
Attn: Patricia Davis, P.E.
City Engineer
P.O. Box 589
Pflugerville, Texas 78691

If intended for Consultant, to:

Name, Address

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled “**Project Name**” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor’s policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include coverage for: Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured

performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property

damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this

Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of

the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

25.6 Texas Government Code Mandatory Provision. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

EXECUTED and **AGREED** to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

CONSULTANT

_____ <i>(Signature)</i>	_____ <i>(Signature)</i>
Printed Name: <u>Sereniah Breland</u>	Printed Name: _____
Title: <u>City Manager</u>	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM:

Charles E. Zech
City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.