



**PLANNING & DEVELOPMENT DEPARTMENT
REQUEST FOR PROPOSALS (RFP)**

**For
CFA Policy Update
RFP No.17-0315**

Issued: July 19, 2017

PROPOSAL SUBMISSION DEADLINE:

******* Thursday, August 10, 2017 by 1:30PM Local Time *******
NO LATE PROPOSALS WILL BE ACCEPTED

<p>RESPONSES SHALL BE DELIVERED TO:</p> <p>CITY OF FORT WORTH PROJECT FACILITATION OFFICE LOWER LEVEL 200 TEXAS STREET FORT WORTH, TEXAS 76102-6314</p>	<p>RESPONSES SHALL BE MAILED TO:</p> <p>CITY OF FORT WORTH PROJECT FACILITATION OFFICE – D.J. HARRELL LOWER LEVEL 200 TEXAS STREET FORT WORTH, TEXAS 76102-6314</p>
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<p>*****</p> <p>FOR ADDITIONAL INFORMATION REGARDING THIS RFP PLEASE CONTACT: D. J. Harrell, Development Services Administrator d.j.harrell@FortWorthTexas.gov or Janie Morales, CFA Manager Janie.morales@fortworthtexas.gov</p> <p>*****</p> <p>RETURN THIS COVER SHEET WITH RESPONSE TO:</p> <p>D. J. Harrell, Development Services Administrator Planning & Development Project Facilitation Division 200 Texas Street, Lower Level Fort Worth, Texas 76102-6314</p>	<p>NAME AND ADDRESS OF COMPANY SUBMITTING PROPOSAL:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Contact Person: _____</p> <p>Title: _____</p> <p>Phone: () _____</p> <p>Fax: () _____</p> <p>Email: _____</p> <p>Signature: _____</p> <p>Printed Name: _____</p>
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Will contract be available for Cooperative Agreement use? (See Section 27, page 9) Yes ___ No ___
Acknowledgment of Addenda: #1 _____ #2 _____ #3 _____ #4 _____ #5 _____

REQUEST FOR PROPOSALS – COMMUNITY FACILITIES AGREEMENT POLICY UPDATE

INTRODUCTION

A. Overview

The City of Fort Worth’s Planning & Development Department is requesting proposals from qualified consultant firms for the purpose of conducting an update to the City’s Community Facilities Agreement Policy “**CFA Policy**”.

Companies with demonstrated experience in municipal policy generation and with an interest in making their services available to City of Fort Worth “**City**” are invited to respond to this RFP. “**Respondents**” means the companies or individuals that submit proposals in response to this RFP. The Respondent shall be financially solvent and each of its members if a joint venture, its employees, agents or sub-consultants of any tier shall be competent to perform the services required under this RFP document.

Nothing in this RFP shall be construed to create any legal obligation on the part of the City or any respondents. The City reserves the right, in its sole discretion, to amend, suspend, terminate, or reissue this RFP in whole or in part, at any stage. In no event shall the City be liable to respondents for any cost or damages incurred in connection with the RFP process, including but not limited to, any and all costs of preparing a response to this RFP or any other costs incurred in reliance on this RFP. No respondent shall be entitled to repayment from the City for any costs, expenses or fees related to this RFP. All supporting documentation submitted in response to this RFP will become the property of the City. Respondents may also withdraw their interest in the RFP, in writing, at any point in time as more information becomes known.

B. Term of Contract

Any contract awarded pursuant to this RFP solicitation shall be for a contract period up to 9 months, with the possibility of an extension.

C. Background

A Community Facilities Agreement “**CFA**” is a contract between the City and Developer that is required whenever the construction of public infrastructure is funded entirely or in part by a private developer. It ensures that new development is adequately served by public infrastructure and that the infrastructure improvements are constructed according to the City’s standards. A CFA may include any of several categories of infrastructure, including but not limited to

streets, sidewalks, street lights, street name signs, traffic signals, storm drainage, water, and sanitary sewer. The City desires to update the CFA policy to ensure:

- The CFA policy requirements conform to State and local law.
- The City's development process is streamlined, effective and efficient.
- The CFA policy is comparable to comparable Texas municipalities.
- The CFA policy does not create an undue burden to developers' construction and dedication of public infrastructure and acceptance of the public infrastructure by the City.
- Clarity and consistency in administering the CFA policy.
- That the CFA policy promotes and facilitates the broader goals and policies of the City, such as the: Subdivision Ordinance, Sidewalk Policy, Traffic Engineering Design Standards, and Water/Wastewater Installation Policy.

REQUIREMENTS

A. Scope of Work

Research, review and analysis to prepare a CFA Policy Revision, Update and Manual. The scope will include a review of the current CFA Policy and research and analysis of relevant State and local laws to identify areas where the current CFA policy may be non-conforming or ambiguous. The selected firm will also be expected to research and summarize Best Management Practices (BMPs) of other Texas cities regarding policies for Developer installation of public infrastructure. Proposals should include the following principal elements:

- The selected firm will be expected to coordinate and guide a series of stakeholder discussions including meeting with City staff, developer focus groups, City management, and the City Council.
- Identify where current processes and procedures vary from the current CFA policy. Utilization of the CFA process outline created through the City's recent Infrastructure Delivery Lean Process Improvement Initiative to develop recommended revisions to the City's CFA Policy and the City's CFA processes and procedures.
- Research policy alternatives – from consultant's BMP research and staff ideas (ex. combining CFA and Spec Book documents and related bonding).
- Define areas of the current policy lacking conformance with State and local laws (if any) as detailed by the consultant's analysis.
- Organizational Analysis – Analyze current City operations, specific to Infrastructure Delivery Contracts, within the City, including but not limited, to organizational structure, department and organizational capabilities, and staffing, and evaluate staff and development community partner recommendations on how to improve the operations and impact of the full inter-organizational team responsible for infrastructure review and acceptance on developer-lead projects in the City.

- Identify and coordinate with other City policies and programs that are impacted by the CFA policy such as the Subdivision Ordinance, Water and TPW Construction Standards, Parkway Permitting Policy, and Water Department’s Miscellaneous Projects Program.
- Review, coordinate, revise form CFA contract agreement in conjunction with updated policy
- Public information program which may include media relations, news releases, public notice advertisements, and general public relations.
- Preparation of CFA Policy Update for codification, revision of contract documents, and creation of administrative manual.

B. Additional Requirements

In addition, proposals should including the following information:

- Proposed Team, including office location, key individuals, organizational description, and resumes.
- Experience and References, including relevant experience of proposed team members and names and contact numbers of responsible individuals who may be contacted for references.
- Project Approach, Cost, and Schedule, including a description of the primary project tasks and proposed methodologies.

EVALUATION CRITERIA AND SCORING

In evaluating responses to this Request for Proposal, the City will take into consideration the experience, capacity, and costs that are being proposed by the Respondent. The following Evaluation Criteria will be considered in reviewing submittals:

- Project Understanding (25%)
- Project Team, Qualifications, Experience, and Capabilities (25%)
- Project Approach and Schedule (25%)
- Project Cost (15%)
- Local Sensitivity (10%)

Experience and Capacity

TO FULFILL THE EXPECTATIONS OF THIS PROJECT, THE CITY IS LOOKING FOR A

CONSULTING FIRM THAT DEMONSTRATES THE FOLLOWING:

- **PREVIOUS EXPERIENCE AND SUCCESS WITH STUDIES OF SIMILAR SCOPE AND NATURE - SPECIFICALLY, PROVIDE EXAMPLES OF THE MOST RELEVANT PROJECTS COMPLETED WITHIN THE LAST FIVE YEARS.**
- **A PROJECT TEAM COMPOSED OF EXPERIENCED PROFESSIONALS WITH A MIX OF ACADEMIC AND REAL WORLD CREDENTIALS.**
- **PUBLIC AND PRIVATE SECTOR EXPERIENCE.**
- **COMPREHENSIVE UNDERSTANDING OF THE COMPLEXITIES OF DEVELOPMENT IN FORT WORTH.**
- **AWARENESS OF ALL LEVELS OF POLITICAL/GOVERNMENT ENVIRONMENTS.**

SUBMITTAL REQUIREMENTS

Responses to this RFP are due by 1:30pm on August 10th, 2017. RFP responses must be submitted **both** by hard copy and e-mail. Each respondent shall submit one (1) original and five (5) copies of the following documents in a clear, legible, 12 point font, and 8.5 by 11 inch format. **Responses not submitted both via hard copy and e-mail will not be considered.**

Responses to this RFP must be e-mailed to: D.J. Harrell, d.j.harrell@fortworthtexas.gov. Each Respondent is responsible for labeling the exterior of the sealed envelope containing the proposal response with the proposal number, proposal name, proposal due date and time, and your firm's name. Hard copies must be delivered to:

**D. J. Harrell
Development Services Administrator
Planning & Development
City of Fort Worth
200 Texas St.
Fort Worth, Texas 76102**

Respondents are advised to adhere to the Submittal Requirements. Failure to comply with the instructions of this RFP will be cause for rejection of submittals. The City reserves the right to seek additional information to clarify responses to this RFP. Each response must include the following:

A. Letter of Interest

Please submit a Cover Letter of Interest signed by a duly authorized officer or representative of the Respondent, not to exceed two pages in length. The Letter of Interest must also include the following information:

A brief summary of the qualifications of the Respondent and team.

- A Description of the organization (i.e. Corporation, Limited Liability Company, or Joint Venture), including the names and business addresses of all Principals of the Respondent. For purposes of this RFP “Principals” shall mean persons possessing an ownership interest in the Respondent.
- The Certification attached hereto at the end of this RFP and incorporated herein by reference must be signed by Respondent and attached to the Letter of Interest.
- Identify Project Manager and any key team members and provide a professional resume of every person that will be assigned to the City’s project. These resumes should include related work experience, education, training, and any other pertinent data that will demonstrate competence and experience in this type of work.

B. Threshold Requirements

These documents must be submitted and acceptable before the City will review the RFP proposal:

1. Three (3) references of related projects, including date of project, contact person, phone number, and a brief description of the project.
2. Conflict of Interest Statement & Supporting Documentation: Respondent shall disclose any professional or personal financial interests that may be a conflict of interest in representing the City.

C. Main Proposal

Please provide the following information:

1. Years of experience and detailed qualifications in performing the range of municipal policy development including team’s resumes. Please provide the number of full-time and part-time employees. Past projects will be reviewed to determine if the respondent has successfully completed projects similar in nature and scope. Respondents should provide narrative examples of three (3) projects that are similar in nature to projects described in the RFP.
2. If you engage independent contractors, how many do you intend to hire? Please provide the areas that will be subcontracted.
3. Pricing proposal. The respondent will sign a fixed price contract to include all work and services.

SELECTION PROCESS

The Selection Committee comprised of City staff will review qualifications in accordance with the evaluation criteria set forth herein and City objectives and policies. Proposals that are submitted timely and comply with the mandatory requirements of the RFP will be evaluated in accordance with the terms of the RFP. Any contract resulting from this RFP will not necessarily be awarded to the respondent with the lowest price. Instead, the contract shall be awarded to respondent whose proposal received the most points in accordance with criteria set forth in RFP.

QUESTIONS

Questions regarding this RFP should be submitted by email to d.j.harrell@fortworthtexas.gov

CERTIFICATION FORM NOTE

THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE SUBMITTAL CERTIFICATION

The undersigned hereby certifies, on behalf of the Respondent named in this Certification (the “Respondent”), that the information provided in this RFP submittal to the City is accurate and complete, and I am duly authorized to submit same. I hereby certify that the Respondent has reviewed this RFP in its entirety and accepts its terms and conditions.

(Name of Respondent)

(Signature of Authorized Representative)

(Typed Name of Authorized Representative)

(Title)

(Date)

ATTACHMENT A CONFLICT OF INTEREST DISCLOSURE REQUIREMENT

Pursuant to Chapter 176 of the Local Government Code, any person or agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity (i.e. The City of Fort Worth) must disclose in the Questionnaire Form CIQ (“Questionnaire”) the person’s affiliation or business relationship that might cause a conflict of interest with the local governmental entity. Bylaw, the Questionnaire must be filed with the Fort Worth City Secretary no later than seven days after the date the person begins contract discussions or negotiations with the City, or submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. Updated Questionnaires must be filed in conformance with Chapter 176.

A copy of the Questionnaire Form CIQ is enclosed with the submittal documents. The form is also available at <http://www.ethics.state.tx.us/forms/CIQ.pdf>.

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each person or agent of a person who is subject to the filing requirement. An offense under Chapter 176 is a Class C misdemeanor.

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed.	_____ Name of Officer	
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7		
_____ Signature of vendor doing business with the governmental entity	_____ Date	

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

...
(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

ATTACHMENT B
PROFESSIONAL SERVICES AGREEMENT
[CONTRACTOR NAME]

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF FORT WORTH** (“City”), a Texas home rule municipal corporation, acting by and through [REDACTED], its duly authorized Assistant City Manager, and [REDACTED], [REDACTED]. (“Contractor”), a [REDACTED], and acting by and through [REDACTED], its duly authorized [REDACTED], each individually referred to as a “party” and collectively referred to as the “parties.”

AGREEMENT DOCUMENTS:

The Agreement documents shall include the following:

1. This Professional Services Agreement;
2. Exhibit A – Scope of Services;
3. Exhibit B – Cost Schedule;
4. Exhibit C – Qualifications & Reference Sheet; and
5. Exhibit D - Signature Verification Form

Exhibits A, B and C, which are attached hereto and incorporated herein, are made a part of this Agreement for all purposes. In the event of any conflict between the terms and conditions of Exhibits A, B or C and the terms and conditions set forth in the body of this Agreement, the terms and conditions of this Agreement shall control.

1. SCOPE OF SERVICES.

[REDACTED] *[simple description of scope of services]*.
Exhibit “A,” - Scope of Services more specifically describes the services to be provided hereunder.

2. TERM.

This Agreement shall begin on [REDACTED], 20[REDACTED] (“Effective Date”) and shall expire on [REDACTED], 20[REDACTED] (“Expiration Date”), unless terminated earlier in accordance with this Agreement (“Initial Term”). [City shall have the option, in its sole discretion, to renew this Agreement under the same terms and conditions, for up to [REDACTED] ([REDACTED]) one-year renewal options, at City’s sole discretion.]

3. COMPENSATION.

City shall pay Contractor in accordance with the fee schedule of Contractor personnel who perform services under this Agreement in accordance with the provisions of this Agreement and Exhibit “B,” – Cost Schedule. Total payment made under this Agreement for the first year by City shall be **in the amount of [REDACTED] Dollars (\$ [REDACTED] .)**. Contractor shall not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. City shall not be liable for any additional expenses of Contractor not specified by this Agreement unless City first approves such expenses in writing.

4. TERMINATION.

4.1. Written Notice. City or Contractor may terminate this Agreement at any time and for any reason by providing the other party with 30 days' written notice of termination.

4.2. Non-appropriation of Funds. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3. Duties and Obligations of the Parties. In the event that this Agreement is terminated prior to the Expiration Date, City shall pay Contractor for services actually rendered up to the effective date of termination and Contractor shall continue to provide City with services requested by City and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Contractor shall provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Contractor has received access to City Information or data as a requirement to perform services hereunder, Contractor shall return all City provided data to City in a machine readable format or other format deemed acceptable to City.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

5.1. Disclosure of Conflicts. Contractor hereby warrants to City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor hereby agrees immediately to make full disclosure to City in writing.

5.2. Confidential Information. Contractor, for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by City ("City Information") as confidential and shall not disclose any such information to a third party without the prior written approval of City.

5.3. Unauthorized Access. Contractor shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Contractor shall notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Contractor shall, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and shall fully cooperate with City to protect such City Information from further unauthorized disclosure.

6. RIGHT TO AUDIT.

Contractor agrees that City shall, until the expiration of three (3) years after final payment under this contract, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Contractor involving transactions relating to this Contract at no additional cost to City. Contractor agrees that City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Contractor reasonable advance notice of intended audits.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Contractor shall operate as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Contractor shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, consultants and subContractors. Contractor acknowledges that the doctrine of *respondeat superior* shall not apply as between City, its officers, agents, servants and employees, and Contractor, its officers, agents, employees, servants, Contractors and subContractors. Contractor further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Contractor. It is further understood that City shall in no way be considered a Co-employer or a Joint employer of Contractor or any officers, agents, servants, employees or subContractor of Contractor. Neither Contractor, nor any officers, agents, servants, employees or subContractor of Contractor shall be entitled to any employment benefits from City. Contractor shall be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees or subContractor.

8. LIABILITY AND INDEMNIFICATION.

8.1 ***LIABILITY - CONTRACTOR SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

8.2 ***GENERAL INDEMNIFICATION - CONTRACTOR HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO CONTRACTOR'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

8.3 ***INTELLECTUAL PROPERTY INDEMNIFICATION*** – Contractor agrees to defend, settle, or pay, at its own cost and expense, any claim or action against City for infringement of any patent, copyright, trade mark, trade secret, or similar property right arising from City's use of the software and/or documentation in accordance with this Agreement, it being understood that this agreement to defend, settle or pay shall not apply if City modifies or misuses the software and/or documentation. So long as Contractor bears the cost and expense of payment for claims or actions against City pursuant to this section, Contractor shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect City's interest, and City agrees to cooperate with Contractor in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against City for infringement arising under this Agreement, City shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, Contractor shall fully participate and cooperate with City in defense of such claim or action. City agrees to give Contractor timely written notice of any such

claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, City’s assumption of payment of costs or expenses shall not eliminate Contractor’s duty to indemnify City under this Agreement. If the software and/or documentation or any part thereof is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Contractor shall, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the software and/or documentation; or (b) modify the software and/or documentation to make it non-infringing, provided that such modification does not materially adversely affect City's authorized use of the software and/or documentation; or (c) replace the software and/or documentation with equally suitable, compatible, and functionally equivalent non-infringing software and/or documentation at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Contractor terminate this Agreement, and refund all amounts paid to Contractor by City, subsequent to which termination City may seek any and all remedies available to City under law.

9. ASSIGNMENT AND SUBCONTRACTING.

9.1 Assignment. Contractor shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee shall execute a written agreement with City and Contractor under which the assignee agrees to be bound by the duties and obligations of Contractor under this Agreement. Contractor and Assignee shall be jointly liable for all obligations of Contractor under this Agreement prior to the effective date of the assignment.

9.2 Subcontract. If City grants consent to a subcontract, sub Contractor shall execute a written agreement with Contractor referencing this Agreement under which sub Contractor shall agree to be bound by the duties and obligations of Contractor under this Agreement as such duties and obligations may apply. Contractor shall provide City with a fully executed copy of any such subcontract.

10. INSURANCE.

Contractor shall provide City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

(a) Commercial General Liability:

\$1,000,000 - Each Occurrence
\$2,000,000 - Aggregate

(b) Automobile Liability:

\$1,000,000 - Each occurrence on a combined single limit basis

Coverage shall be on any vehicle used by Contractor, its employees, agents, representatives in the course of the providing services under this Agreement. “Any vehicle” shall be any vehicle owned, hired and non-owned.

(c) Worker’s Compensation:

Statutory limits
Employer's liability

\$100,000 - Each accident/occurrence
\$100,000 - Disease - per each employee
\$500,000 - Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.0 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of:

\$100,000 - each accident/occurrence, \$500,000 bodily injury disease policy limit
\$100,000 - per disease per employee.

(d) Professional Liability (Errors & Omissions)

\$2,000,000 - Each Claim Limit
\$2,000,000 - Aggregate Limit

Professional Liability coverage may be provided through an endorsement to the Commercial General Liability (CGL) policy, or a separate policy specific to Professional E&O. Either is acceptable if coverage meets all other requirements. Coverage shall be claims-made, and maintained for the duration of the contractual agreement and for two (2) years following completion of services provided. An annual certificate of insurance shall be submitted to City to evidence coverage.

10.2 General Requirements

- (a) The commercial general liability and automobile liability policies shall name City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents, and volunteers in respect to the contracted services.
- (b) The workers' compensation policy shall include a Waiver of Subrogation (Right of Recovery) in favor of City.
- (c) A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage shall be provided to City. Ten (10) days' notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the Risk Manager, City of Fort Worth, 200 Texas Street, Fort Worth, Texas 76102, with copies to the Fort Worth City Attorney at the same address.
- (d) The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial

- strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
- (e) Any failure on the part of City to request required insurance documentation shall not constitute a waiver of the insurance requirement.
 - (f) Certificates of Insurance evidencing that Contractor has obtained all required insurance shall be delivered to the City prior to Contractor proceeding with any work pursuant to this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Contractor agrees that in the performance of its obligations hereunder, it shall comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Contractor of any violation of such laws, ordinances, rules or regulations, Contractor shall immediately desist from and correct the violation.

12. NON-DISCRIMINATION COVENANT.

Contractor, for itself, its personal representatives, assigns, subContractors and successors in interest, as part of the consideration herein, agrees that in the performance of Contractor’s duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY CONTRACTOR, ITS PERSONAL REPRESENTATIVES, ASSIGNS, SUBCONTRACTORSS OR SUCCESSORS IN INTEREST, CONTRACTOR AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

13. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

<p>To CITY:</p> <p>City of Fort Worth Attn: [REDACTED], Assistant City Manager 200 Texas Street Fort Worth, TX 76102-6314 Facsimile: (817) 392-8654</p>	<p>To CONTRACTOR:</p> <p>[REDACTED], [REDACTED], Title 1891 Metro Center Drive Reston, VA 20190 Facsimile: (703) 251-8240</p>
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With copy to Fort Worth City Attorney’s Office at same address

14. SOLICITATION OF EMPLOYEES.

Neither City nor Contractor shall, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement,

without the prior written consent of the person's employer. Notwithstanding the foregoing, this provision shall not apply to an employee of either party who responds to a general solicitation of advertisement of employment by either party.

15. GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

16. NO WAIVER.

The failure of City or Contractor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of City's or Contractor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

17. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

18. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

19. FORCE MAJEURE.

City and Contractor shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

20. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only, shall not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

21. REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or Exhibits A, B, and C.

22. AMENDMENTS/ MODIFICATIONS/ EXTENSIONS.

No amendment, modification, or extension of this Agreement shall be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.

23. ENTIRETY OF AGREEMENT.

This Agreement, including Exhibits A, B and C, contains the entire understanding and agreement between City and Contractor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

24. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

25. WARRANTY OF SERVICES.

Contractor warrants that its services will be of a professional quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the services are completed. In such event, at Contractor's option, Contractor shall either (a) use commercially reasonable efforts to re-perform the services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Contractor for the nonconforming services.

26. IMMIGRATION NATIONALITY ACT.

City actively supports the Immigration & Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Contractor shall verify the identity and employment eligibility of all employees who perform work under this Agreement. Contractor shall complete the Employment Eligibility Verification Form (I-9), maintain photocopies of all supporting employment eligibility and identity documentation for all employees, and upon request, provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor shall establish appropriate procedures and controls so that no services will be performed by any employee who is not legally eligible to perform such services. Contractor shall provide City with a certification letter that it has complied with the verification requirements required by this Agreement. Contractor shall indemnify City from any penalties or liabilities due to violations of this provision. City shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

27. OWNERSHIP OF WORK PRODUCT.

City shall be the sole and exclusive owner of all reports, work papers, procedures, guides, and documentation, created, published, displayed, and/or produced in conjunction with the services provided under this Agreement (collectively, "Work Product"). Further, City shall be the sole and exclusive owner of all copyright, patent, trademark, trade secret and other proprietary rights in and to the Work Product. Ownership of the Work Product shall inure to the benefit of City from the date of conception, creation or

fixation of the Work Product in a tangible medium of expression (whichever occurs first). Each copyrightable aspect of the Work Product shall be considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Work Product, or any part thereof, is not considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Contractor hereby expressly assigns to City all exclusive right, title and interest in and to the Work Product, and all copies thereof, and in and to the copyright, patent, trademark, trade secret, and all other proprietary rights therein, that City may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of City.

28. SIGNATURE AUTHORITY.

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Contractor whose name, title and signature is affixed on the Verification of Signature Authority Form, which is attached hereto as Exhibit "D". Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.

29. CHANGE IN COMPANY NAME OR OWNERSHIP

Contractor shall notify City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of Contractor or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiples this [redacted] day of [redacted], 2017.

(signature page follows)

ACCEPTED AND AGREED:

CITY OF FORT WORTH: By: _____ Name: [redacted]	CONTRACTOR: By: _____
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<p>Assistant City Manager</p> <p>Date: _____</p> <p>APPROVAL RECOMMENDED:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>ATTEST:</p> <p>By: _____</p> <p>City Secretary</p> <p>CONTRACT COMPLIANCE MANAGER:</p> <p>By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>APPROVED AS TO FORM AND LEGALITY:</p> <p>By: _____</p> <p>Name: _____</p> <p>Assistant City Attorney</p> <p>CONTRACT AUTHORIZATION:</p> <p>M&C: <u>N/A</u></p>	<p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>ATTEST:</p> <p>By: _____</p> <p>Title: _____</p>
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