



Electric Resource Management Assessment

RFP No. 201918
Due: February 21, 2019

REQUEST FOR PROPOSAL

300-1 Industrial Ave
Georgetown, TX 78626

PO Box 409
Georgetown, TX 78627

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I. DEFINITIONS

The following definitions shall apply in this RFP:

Agreement or Contract – A mutually binding legal document obligating the Successful Proposer to furnish the services specified within this solicitation and as agreed, and obligating the City to pay for such services.

City – The City of Georgetown, located in Williamson County, Texas.

City Council – The elected officials of the City of Georgetown, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

Proposer – A firm or individual submitting a Proposal in response to this Request for Proposal.

RFP – Request for Proposal.

Successful Proposer – Proposer whose proposal is selected based on the criteria set forth in this RFP.

II. NOTICE TO PROPOSERS

A. PURPOSE

The City of Georgetown seeks to enter into an agreement with a qualified firm or individual with substantial and relevant experience and expertise to provide an **assessment and management recommendations for its electric resource management function**.

The Successful Proposer must meet all requirements of this RFP, maintain proper licensing, and comply with all federal, state, and local laws and mandates relative to the services specified in this RFP.

B. NOTICE

Proposals are due at **2:00 PM (CST) on Thursday, February 21, 2019** after which time all qualified proposals will be acknowledged at 300-1 Industrial Ave, Georgetown, Texas 78626. Proposals received after the specified deadline will be returned unopened.

(1 original and 5 duplicate copies – marked “copy”) plus 1 digital copy (CD/DVD/thumb drive) of proposals must be provided.

Sealed proposals, to include digital copy, shall be clearly marked with the RFP number and title, Firm’s name, and addressed to the City of Georgetown – Purchasing Department.

Proposals shall be delivered using one of the following:

Hand-deliver to:

300-1 Industrial Ave.

Georgetown, TX 78626

Ship to (US mail, FedEx, UPS, DHL, etc.):

300-1 Industrial Ave.

Georgetown, TX 78626

NOTE: Procurement opportunities are posted on the City of Georgetown’s On-Line Bidding System and can be downloaded from:

<https://gtowntx.ionwave.net/CurrentSourcingEvents.aspx>.

You may receive notice of proposals for the City of Georgetown from a variety of channels. Approved methods of dissemination include: City of Georgetown website or the City of Georgetown Purchasing Office. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render Proposer’s proposal response non-compliant. City of Georgetown accepts no responsibility for the receipt of notifications for solicitations through any other source.

C. QUESTIONS AND INQUIRIES

Effective immediately upon release of this solicitation and until contract award, all official communications from Proposer regarding the requirement of this RFP shall be submitted in writing via email to the following point of contact:

Nicole Abrego

Buyer

Email: Nicole.abrego@georgetown.org

The deadline for written questions is **5:00 PM (CST) on Friday, February 15, 2019**. This deadline has been established in order to provide adequate time for City staff to prepare responses to questions from Proposers. Proposers shall not attempt to contact City Council members, City staff, or City Management directly during the pre-proposal or post-proposal period. The City intends to respond to all appropriate questions or concerns; however, the City reserves the right to decline to respond to any question or concern. All material modifications, clarifications, or interpretations will be incorporated into an addendum which will be publically posted. All addenda issued prior to the due date and time for responses are incorporated into the RFP and must be acknowledged in the proposal response. Only written information provided shall be binding. Oral or other interpretations shall not be binding and are held without legal effect.

D. ANTICIPATED SCHEDULE OF IMPORTANT DATES

The City will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events:

| | |
|--------------------------------------|---------------------------------------|
| Release of RFP | Thursday, February 7, 2019 |
| Deadline for Questions and Inquiries | Friday, February 15, 2019 at 5 p.m. |
| Proposals Closing Date and Time | Thursday, February 21, 2019 at 2 p.m. |
| Expected Award by City | March 2019 |

E. DISCLOSURE

All proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information which Proposers identify as proprietary, all proposals will be open for public inspection after the contract award.

F. DISCLOSURE OF CONFLICT OF INTEREST

Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Any completed Conflict of Interest Questionnaires shall be submitted to the City. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the vendor's offer.

G. DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to Section 2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.
3. The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

H. EXCEPTIONS

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Proposal. Any deviations or exceptions are subject to review by the City and may deem the Proposal disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

I. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit proposals in response to this solicitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

J. CLAIMS

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the Purchasing Department as set forth below and to the City Attorney at PO Box 409, Georgetown, TX 78627.

K. COLLUSION

Advanced disclosures of any information to any particular respondent which gives that particular respondent any advantage over any other interested proposer in advance of the opening of proposals, whether in response to advertising or an informal request for proposals, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular proposal solicitation or request.

L. TAX EXEMPT

Proposer's bid prices must be net, exclusive of taxes. The City is exempt from State Retail Tax and Federal Excise Tax.

M. RECEIPT OF PROPOSALS

Proposal(s) must be received by the City's Purchasing Department prior to the time and date specified. The mere fact that the proposal was dispatched will not be considered; the Proposer must insure that the proposal is actually delivered. The time proposals are received shall be determined by the time clock stamp in the City's Purchasing Department.

N. PUBLIC INFORMATION

All Proposals are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Proposers are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Proposers.

If a Proposer believes that a Response or parts of a Response are confidential, then the Proposer shall so specify. The Proposer shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Proposer believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Proposals and parts of Proposals that are not marked as confidential will be automatically considered public information.

O. REIMBURSEMENTS

There is no express or implied obligation for the City of Georgetown to reimburse responding Proposers for any expenses incurred in preparing proposals in response to this request, and the City of Georgetown will not reimburse Proposers for these expenses, nor will the City pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

P. REPRESENTATIONS AND RESPONSIBILITIES

By submitting a proposal in response to this RFP, Proposer represents that it has carefully read and understands all elements of this RFP; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work; and has full knowledge of the scope, nature, quality, and quantity of services to be performed.

By submitting a proposal in response to this RFP, Proposer represents that it has not relied exclusively upon any technical details in place or under consideration for implementation by the City, but has supplemented this information through due diligence research and that the Proposer sufficiently understands the issues relative to the indicated requirements.

The failure or omission of Proposer to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site or other details shall in no way relieve Proposer from any obligations with respect to its proposal or to the contract.

Q. MANAGEMENT

Should there be a change in management after the due date and time, but before a contract is awarded, Proposers must notify the City immediately. This may result in further evaluation. Should a change in management occur after the contract is awarded, the contract shall be canceled unless a mutual agreement is reached with the new owner or manager to continue the contract. Any resulting contract is nontransferable by either party.

R. PRICE WARRANTY

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

S. PERSONAL INTEREST

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of this solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this paragraph shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase services from the association only if no member of the governing body,

board, or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to members of the association. Any violation of this provision with the knowledge, expressed or implied, by the vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the services under the Agreement if a conflict of interest affidavit is filed and the Council member recuses him/herself.

T. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

U. WITHDRAWAL OF PROPOSALS

Proposers may request withdrawal of a sealed proposal prior to the scheduled proposal closing time, provided the request for withdrawal is submitted to Purchasing in writing.

V. PROTEST PROCEDURES

1. Proposers are advised that protests of specifications, terms, conditions or any other aspect of this solicitation, must be made prior to the proposal due date. Protest of specifications and solicitation terms and conditions made after the due date and time will not be considered by the Buyer.
2. Protest of award must be made immediately, and in no event later than five (5) days after the aggrieved party knows, or should have known, the facts giving rise thereto. All protests must include the following information:
 - The name, address and telephone number of the protestor
 - The signature of the protestor or protestor's representative
 - The solicitation or contract number
 - A detailed statement of the legal and/or factual ground of the protest
 - The form of relief/result requested

Protests shall be mailed to the Purchasing Department, P.O. Box 409, Georgetown, TX 78627, Attention: Rosemary Ledesma. Award will be made in the best interest of the City.

III. BACKGROUND

A. CITY OF GEORGETOWN

Georgetown is a Home Rule Charter City and operates under a Council - Manager Form of government. A mayor, elected at large, and seven council members, elected from single

member districts, serve staggered, three-year terms. Georgetown is located on Interstate 35, the major corridor between Dallas and San Antonio, at the intersection of State Highway 130. Georgetown was founded in 1848 with a strong agricultural base, in the heart of Williamson County, 26 miles north of Austin. Today, Georgetown has an estimated population of 59,391 within the City limits, with an estimated population of 85,753 within the extra-territorial jurisdiction (ETJ) and serves as the county seat of Williamson County.

The City of Georgetown Utility Systems (GUS) opened their first power plant in 1911. This plant used both coal and diesel fuel as a resource, served the population of the time and operated until the 1940s. In 1942, the City began a long term relationship with the Lower Colorado River Authority (LCRA), where the LCRA was responsible for securing generation, and providing transmission and transformation services to GUS, with the City retaining the right to serve the end user customers. In 2012, the City opted to stop taking delivery from LCRA and put out bids for replacement power.

The City contracted in 2013 for 144MW of wind energy with Spinning Spur 3 through 2035, and contracted in 2015 for 150MW of solar energy with Buckthorn through 2043. The City also has a natural gas contract with Mercuria that expires in 2021. These contracts put GUS in a long position and the quantities were based upon Georgetown's continued strong growth patterns, previous experience with high cost spikes for peaking energy, the Energy Reliability Council of Texas forecast for energy shortages and predictions of increasing prices. The excess energy that is not utilized by GUS customers is settled in the Energy Reliability Council of Texas (ERCOT) market.

The City currently contracts with Garland Power and Light as a Qualified Scheduling Entity. The City has contracted consulting services to provide power price hedging services and to evaluate and assist the City in managing power supply price and performance and risk based upon the City's power supply contracts with market participants which provide for its utility load, with the assistance of two GUS employees.

The City has experienced significant budget variances since the approval of the long term contracts, which is driving a review of management strategies to ensure sustainability for future electric energy resource management functions.

IV. SCOPE OF WORK

The Successful Proposer will provide an assessment of the City of Georgetown Utility System (GUS) electric resource management function's current structure, practices, protocols and effectiveness as well as a determination of the extent to which there are opportunities for improvement and adherence to best industry practices. In this regard, this assessment will focus on the City's organizational structure and management oversight, as well as the specific tasks of electric load and supply forecasting, supply procurement, system planning, risk assessment, management of energy consultants, contract management, congestion management, scheduling and operational reporting.

Time is of the essence in this review, and the target date for the initial results is within a 60 day

period from contract execution. The City's budget includes \$40,000 to complete this assessment.

The assessment shall include the following:

- Identification of specific opportunities, as needed, to maximize performance, including operational productivity, management communications and oversight, organizational effectiveness, cost controls and savings, overhead cost allocations, work quality, and other measurable elements.
- Identification of specific opportunities, as needed, for improving: planning for contracted energy, organizational structure, business processes, management practices, systems and operations.
- Recommendations to formalize risk objectives/tolerance and a decision making process to provide a framework for individuals or committees to carry out energy transactions that are supported by controls and procedures to ensure an appropriate level of oversight.
- Recommendations, as needed, for implementing changes to achieve performance improvements.
- Where feasible, recommendations should be supported by benefit/risk and benefit/cost analyses.
- Completion of a written report that meets the scope and objectives of the RFP, including factual findings, conclusions and recommendations listed above.

V. EVALUATION AND SELECTION PROCESS

The Successful Proposer, if any, selected by the City through this RFP will be the Proposer that submits a Proposal on or before the due date that is most advantageous to the City. The City will evaluate each Proposer's responses to the requirements contained in this RFP.

CLARITY AND QUALITY OF PROPOSAL

Proposers must provide comprehensive responses to every section within this RFP in the described format. It is not the intent of the City to constrain Proposers with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review and evaluation. Failure to do so may result in Proposer's proposal being disqualified from further review and consideration.

Written proposals must present Proposers' qualifications and understanding of the work to be performed. Proposals must be as thorough and detailed as possible so that the City may properly evaluate capabilities to provide the requested services.

EVALUATION CRITERIA

The following evaluation criteria, description and relative weight assigned to each shall be used to review each Proposal:

Experience and Qualifications

50 points

- Reputation of the proposer

- Proposed team experience and qualifications , including experience with ERCOT (Electric Reliability Council of Texas)
- Examples of previous work with municipally owned electric utilities that are Transmission Dependent Utilities public power cities

Methodology and Technical Approach **20 points**

- Demonstration of capacity to provide the scope of services
- Ability to meet timeline

Reference Checks for three previous projects **15 points**

- Positive references for prior work
- Proposer’s past relationship with the City or public power

Cost Proposal **15 points**

TOTAL POINTS AVAILABLE **100**

By submission of a proposal, Proposer acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, and all other terms and conditions set forth in this RFP. Further, Proposers acknowledge that subjective judgements must be made by the City during this process.

The City makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason or do any of the following:

- Reject any and all proposals received as a result of this RFP
- Waive or decline to waive any informality and any irregularities in any proposal or responses received
- Negotiate changes in the Scope of Work or services to be provided
- Withhold the award of contract(s)
- Select Proposer(s) it deems to be most qualified to fulfill the needs of the City. Proposer(s) with the lowest priced proposal(s) will not necessarily be selected, since a number of criteria other than price are important in the determination of the most acceptable proposal(s)
- Terminate the RFP process.

VI. STANDARD TERMS AND CONDITIONS

The terms and conditions contained in the City Form Agreement (attached as Attachment A) or, in the

sole discretion of the City, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal. Proposer's exceptions will be reviewed by the City and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then the City may consider Proposer's exceptions when City evaluates the Proposer's proposal.

VII. PROPOSAL SUBMISSION REQUIREMENTS

The Purchasing Department will not accept oral proposals or proposals received by telephone or FAX machine. Proposals must be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet all requirements and specifications of this RFP. Emphasis should be focused on completeness, clarity of content, and responsiveness to all requirements and specifications of this RFP.

The proposal must be submitted in hard copy. **Proposer shall submit one (1) evident original and five (5) copies, marked "copy" of the entire proposal, plus one (1) digital copy (on CD, DVD or thumb drive).**

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

TAB A - FIRM BACKGROUND

The City is seeking a firm(s) with qualified experience and the capacity to provide the services required.

1. Briefly introduce the firm and provide number of years in business.
2. Provide a summary of the administration, organization and staffing of the firm, including multiple offices, if applicable.
3. Include the same for any associate firm or sub-consultant.
4. Provide the location of the firm or branch that will provide services to the City.

TAB B - PROJECT EXPERIENCE and QUALIFICATIONS

1. Provide details on experience and qualifications of the firm in performing services of similar scope and size related to scope in the RFP.
2. Describe at least three (3) projects that are complementary in nature to this project. References for each project should be included (preferably other Municipal, Town, or local governments that the proposer has provided services to).

3. Identify the proposed team members who will provide services. Provide details on their experience and qualifications. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications and licenses, etc.

TAB C - PROPOSED PLAN and TECHNICAL APPROACH

1. Provide a narrative description of the Firms' plan to accomplish the work and services to be provided to the City. Provide timelines and graphs for completing the work. Demonstrate capacity to complete the work. Clearly acknowledge your understanding of the Scope of Work.
2. Provide suggestions and ideas for managing this project in an efficient, effective and innovative manner.
3. Identify progress reports that will be made available during the process and key decision points.

TAB D - COST PROPOSAL

1. Provide a fixed fee not to exceed total cost proposal to include travel expenses.
2. The actual contract amount will be negotiated after the Firm has been selected and the scope of work finalized.

TAB E - CITY'S FORM OF AGREEMENT

1. Please confirm acceptance of the City's Agreement, Attachment A.
2. List any exceptions taken to the standard terms and conditions and any other requirement, provision outlined in the RFP. Please be aware that the City is not obligated to accept any exceptions taken to the RFP.

TAB F - CERTIFICATION and ACKNOWLEDGEMENT PAGE

VIII. CERTIFICATION and ACKNOWLEDGEMENT

The undersigned, as an authorized agent of the proposer, hereby certifies:

- () The Proposer is in receipt of _____ addenda.
- () The Proposer is familiar with all instructions, terms and conditions, and specifications stated in this RFP.
- () The Proposer has reviewed the City's Form of Agreement released with this RFP (Exhibit A), which Agreement will form the basis of any contract for the performance of the work. **Any request for modifications are included in the proposal by way of response included in TAB E.**
- () The Proposer is qualified to perform the work and services outlined in this RFP.
- () The proposal was developed independently and submitted without collusion with any other Proposer, City staff or City contractor, and the contents of the proposal have not been communicated by the Proposer or, to the Proposer's best knowledge and belief, by any one of its employees or agents to any person not an employee or agent of the Proposer, and will not be communicated to any person prior to the City's final action on this RFP by City Council. Nothing in this paragraph shall be construed to prevent or preclude two or more companies or persons from joining together to submit a proposal for the work.
- () The offers, terms and conditions of the proposal will remain valid and effective and may be relied upon by the City for a period of ninety (90) days following the Proposal Closing Date and Time as identified in this RFP or addenda.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____

P.O. Box or Street City State Zip

Order Address: _____

P.O. Box or Street City State Zip

Remit Address: _____

P.O. Box or Street City State Zip

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

CONSULTATION AGREEMENT WITH THE CITY OF GEORGETOWN

This Consultation Agreement (the "Agreement") is entered into and made effective on the _____ day of _____, _____ by and between _____ ("Consultant") and the City of Georgetown, Texas ("City").

1. **Scope of Services.** Consultant agrees to provide such services as further described in **Exhibit A**, which is attached and incorporated herein. Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph four of this Agreement shall be made and approved by the City prior to the Consultant providing such services, or the right to payment for such additional services shall be **waived**. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Agreement, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.
2. **Supplement Provisions.** Supplemental provisions applicable to this Agreement are included in **Exhibit B** and incorporated herein by reference.
3. **City Terms Prevail.** In the event there is a conflict between a term in **Exhibit A** or **Exhibit B** and a term in this agreement, the terms of this agreement shall prevail.
4. **Total Compensation.** The total compensation paid by the City to the Consultant, including expenses, under this agreement shall not exceed \$_____. Payment schedule will be made in accordance with **Exhibit C**, which is attached and incorporated herein.
5. **Term.** The term of this Agreement shall be in effect until the services have been completed by Consultant, but in no event shall the term extend beyond _____.
6. **Amendments.** Any changes to the terms of this agreement will not be effective unless in writing and signed by both parties.
7. **Insurance.** Consultant shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are set forth in **Exhibit D**. Consultants insurance certificate satisfying the City insurance requirements is attached as **Exhibit E**.
8. **INDEMNITY. THE CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT**

OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR SERVICES PROVIDED UNDER THE AGREEMENT OR FROM ITS NEGLIGENCE OR WILLFUL ACT WHETHER SUCH ACT BE BY THE CONSULTANT OR ITS DESIGNEE. THE CITY, AS A GOVERNMENTAL ENTITY IN THE STATE OF TEXAS, SHALL NOT INDEMNIFY THE CONSULTANT.

9. **Release by Consultant.** The Consultant releases, relinquishes and discharges the City, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either party or other third parties) and any loss or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with the work it performed under this Agreement. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance.

10. **Dispute Resolution.** If either the Consultant or the City has a claim or dispute, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

11. **Ownership of Documents.** The City shall retain ownership of all associated work products and documentation obtained from or created by the Consultant pursuant to this Agreement. Consultant shall deliver all documents or other work product to the City upon request, including original versions if so specified in the request.

12. **Payment Terms.** All payments will be processed in accordance with Texas Prompt Payment Act, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Consultant within thirty days after of receipt of a correct invoice for services. The Consultant may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Consultant concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Consultant and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which

caused the payment to be late; or (d) the invoice is not mailed to the City in accordance with Agreement.

- 13. **Termination for Convenience.** The City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Consultant shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Consultant, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination.

- 14. **Termination for Cause.** In addition to the termination rights described above, either party may terminate this Agreement effective upon written notice to the other if the other breaches any of the terms and conditions of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party. In addition to all other remedies available under law and in equity, the City may remove the Consultant from the City's Vendor list in the event that this Agreement is terminated for cause and any offer submitted by the Consultant may be disqualified for up to three (3) years.

- 15. **Non-Appropriation.** This Agreement is a commitment of City's current revenues only. It is understand and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the city does not appropriate funds sufficient to purchase the services. The City may terminate for non-appropriation by giving the Consultant a written notice of termination at the end of its then current fiscal year.

- 16. **Notices.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly, or sent via electronic means, addressed to the appropriate party at the address set forth below:

Notice to the Consultant:

Notice to the City:

City of Georgetown
ATTN: City Manager
P.O. Box 409
Georgetown, Texas 78627
_____@georgetown.org

With a copy to:

City of Georgetown
ATTN: City Attorney
P.O. Box 409
Georgetown, Texas 78627
_____@georgetown.org

17. **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Consultant's services shall be those of an independent contractor. The Consultant agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Consultant shall not be within protection or coverage of the City's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.
18. **Force Majeure.** The City and the Consultant will exert all efforts to perform the tasks set forth herein within the proposed schedules. However, neither the City nor the Consultant shall be held responsible for inability to perform under this Agreement if such inability is a direct result of a force substantially beyond its control, including but not limited to the following: strikes, riots, civil disturbances, fire, insurrection, war, embargoes, failures of carriers, acts of God, or the public enemy.
19. **No Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
20. **Nondiscrimination.** The Consultant, with regard to the work performed by it after award and prior to completion of this Agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by any federal, state or local law.
21. **Right to Audit.** The Consultant agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all Consultant records related to the performance under this Agreement. The Consultant shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Consultant are resolved, whichever is longer.
22. **Advertising and Publicity.** Consultant shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.
23. **Confidential Information.** Each party agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement or as required by the Texas Public Information Act or other applicable law. Confidential Information shall be designated and marked as such at the time of disclosure. Each party agrees to secure and protect the other

party's Confidential Information in a manner consistent with the maintenance of the other party's confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants, or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The provisions of this paragraph shall survive the term of the Agreement.

24. **Contractor Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
25. **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*], Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
26. **Severability.** This Agreement is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Agreement if it can be given effect without the invalid parts.
27. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue shall be located in Williamson County, Texas.
28. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and any subsequent successors and assigns; provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Consultant without the prior written consent of the City. Any attempted assignment or delegation by the Consultant shall be void unless made in conformity with this Paragraph.
29. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Consultant.
30. **Entire Agreement.** This Agreement, with all exhibits, includes the entire agreement of the City and the Consultant and supersedes all prior and contemporaneous agreements between the parties, whether oral or written, relating to the subject of this agreement.

THE CITY OF GEORGETOWN

{NAME OF CONSULTING FIRM}

_____, _____

Name, Title

Date Signed: _____

Date Signed: _____

Approved as to form:

_____, Asst. City Attorney

Exhibit A
Scope of Services

Exhibit B
Supplemental Provisions

Exhibit C

Payment Terms

[SELECT ONE OF FOLLOWING OPTIONS]:

Compensation is based on *actual* hours of work/time devoted to providing the described services. The Consultant will be paid at a rate of \$_____ per hour, or at the rates per service or employee shown below. The City will reimburse the Consultant for *actual*, non-salary expenses at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 1.03 of this Agreement (\$_____).

The Consultant must submit *monthly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Expenses shall be reimbursed as follows:

[INSERT SPECIFIC PROVISION FOR EXPENSES]

-OR-

Payment is a fixed fee in the amount listed in Section 4 of this Agreement. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase:

[INSERT PAYMENT SCHEDULE HERE]

Exhibit D

Insurance Requirements

I. The Consultant agrees to maintain the types and amounts of insurance required in this Agreement throughout the term of the Agreement. The following insurance policies shall be required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Workers' Compensation
- D. Professional Liability

II. For each of these policies, the Consultant's insurance coverage shall be primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Agreement shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City *before* work commences.

III. General Requirements Applicable to All Policies.

- A. Only licensed insurance carriers authorized to do business in the State of Texas shall be accepted.
- B. Deductibles shall be listed on the certificate of insurance and are acceptable only on an "occurrence" basis.
- C. "Claims made" policies are not accepted, except for Professional Liability insurance.
- D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Georgetown.
- E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
 - 1. The insurance company is licensed and authorized to do business in the State of Texas
 - 2. The insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO
 - 3. All endorsements and coverages are included according to the requirements of this Agreement
 - 4. The form of notice of cancellation, termination, or change in coverage provisions is specified in this attachment

- F. The City of Georgetown, its officials, agents, employees, and volunteers are to be listed as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, employees, and volunteers.

V. **Commercial General Liability** requirements:

- A. Coverage shall be written by a carrier rated “A: VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
- C. Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall not exclude: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, Explosion, Collapse and Underground coverage.
- F. The City shall be listed as Additional Insured, and the policy shall be endorsed to waive rights of subrogation, to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.

VI. **Business Automobile Liability** requirements:

- A. Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- D. The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

VII. **Workers' Compensation Insurance** requirements:

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Consultant, the Consultant, *all* employees of any and all subconsultants, and all other persons providing services on the Project must be covered by a workers compensation insurance policy, either directly through their employer's policy (the Consultant's, or subconsultant's policy) or through an executed coverage agreement on an approved DWC form. Accordingly, if a subconsultant does not have his or

her own policy and a coverage agreement is used, Consultants and subconsultants *must* use that portion of the form whereby the hiring Consultant agrees to provide coverage to the employees of the subconsultant. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Consultant may not be used.

- B. The workers compensation insurance shall include the following terms:
1. Employer's Liability limits of \$1,000,000 for each accident is required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VIII. Professional Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City upon request.
- C. For "claims made" policies, the availability of a 24-month extended reporting period is necessary. The retroactive date shall be shown on the certificate of liability insurance.

Exhibit E
Certificate of Insurance