

**CITY OF LAVON, TEXAS
RFP #2018-2012**



**REQUEST FOR SEALED PROPOSALS FOR
PUBLIC IMPROVEMENT DISTRICT ADMINISTRATION AND
SERVICE AND ASSESSMENT PLAN CONSULTANT SERVICES**

**PROPOSALS ISSUED:
September 14, 2018**

**RFP SUBMITTALS DUE:
October 5, 2018**

RFP #2018-2012
Invitation for Proposals
Public Improvement District (PID) Administration and
Service and Assessment Plan (SAP) Consultant Services
City of Lavon, Texas

The City of Lavon is seeking responses from qualified firms to serve as the City's Service and Assessment Plan ("SAP") Consultant and/or Public Improvement District ("PID") Administrator on planned upcoming developments. At this time, the City is still in negotiations with various developers and no new development agreements have been entered into. However, it is anticipated that PIDs may be used with one or more developments. Further, special assessment revenue bonds may be issued by the City for a respective PID. These developments are anticipated to be primarily residential-based.

A sealed copy of the bid proposal may be submitted by courier or hand delivered to 1) Kim Dobbs, City Administrator, City of Lavon, 120 School Road, Lavon, Texas 75166, or mailed to P.O. Box 340, Lavon, Texas 75166 and to 2) Jason Hughes, Financial Advisor to the City, Hilltop Securities, 1201 Elm Street, Suite 3500, Dallas, Texas 75270. Mark envelope in the lower left corner "RFP No. 2018-2012; Public Improvement District (PID) Administration – Service and Assessment Plan (SAP) Consultant Services," so the proposals will not be opened until the appointed hour. Proposals submitted must be received before proposal closing on October 5, 2018 at 3:00 p.m. Faxed proposals will not be accepted.

GENERAL CLAUSES AND CONDITIONS

1. If you have questions regarding the preparation of your proposal or for technical questions, you may contact Kim Dobbs, City Administrator, at (972) 843-4220 or email at: kim.dobbs@cityoflavon.org.
2. **Protection of Resident Workers:** The City of Lavon actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
3. **Laws and Ordinances:** The Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations which in any manner affect the Contract or the work and shall indemnify and save harmless the City against any claim arising from the violation of any such laws, ordinances and regulations whether by the Contractor or his employees.
4. Mailed proposals must be **received as 1 (one) original and 3 (three) copies to the City and 1 (one) original to the Financial Advisor**, on this form, prior to the closing date and time to be considered. Mailed proposals must be submitted in sufficient time to be received and time-stamped at the above location on or before the published date and time shown on the RFP. The City of Lavon will not be responsible for mail delivered from the post

office. Proposals received after the published time and date cannot be considered and will be returned unopened.

5. Proposals will be received and publicly acknowledged at the location, date and time stated above. Only the name of the proposers responding to this request for proposal shall be released at the proposal opening. Other information submitted by the proposer shall not be released by the City during the proposal evaluation process or prior to contract award. At no time will confidential information, as noted by the proposer, be released.
6. Proposer shall attach official documentation from the State of Texas or other qualified certification agency of M/WBE status of your company with bid/proposal. The data is for informational purposes only and will not affect the bid proposal award.
7. A completed W-9 form will be required within five business days by the apparent most qualified proposer once notification has been received.
8. In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
9. The attached Non-Exclusion Affidavit for General Contractors must be signed, notarized and submitted with bid proposal.
10. A representative of the proposing entity who is authorized to enter into contract on behalf of the proposing entity must manually sign proposals in ink. The person signing the proposal must indicate his/her title along with signature. Proposals received without proper signature will not be considered.
11. Any ambiguity in the bid proposal as a result of omission, error, lack of clarity or non-compliance by the proposer with specifications, instructions and all conditions shall be construed in favor of the City.
12. The City of Lavon reserves the right to reject any and all proposals, waive formalities or irregularities, make award to a SAP Consultant and a separate PID Administrator, and to make award of bid proposal as may be deemed to be in the best interest of the City. No proposal may be withdrawn within forty-five (45) days after date of opening.
13. This Contract may be terminated at any time with thirty-(30) days written notice by either the City of Lavon or successful proposer.
14. The City is not liable for any cost incurred by Proposers in replying to this RFP. This includes costs to determine the nature of the proposal, submitting, negotiating, presentations or any other costs a vendor would incur in responding to the RFP.
15. Proposers shall complete all information requested and blanks provided shall be filled in on the provided forms. Failure to completely describe the merchandise being proposed may result in rejection of your bid proposal. Responses are limited to 20 pages, excluding the example presentations and any appendices.
16. The City is exempt from all sales and excise taxes.

17. The City of Lavon reserves the right to evaluate variations from these specifications. If exceptions are made, proposer shall state wherein the merchandise or services fails to meet these specifications. Failure to completely describe the merchandise or service being proposed may result in rejection of your proposal.
18. It shall be understood all proposals, responses, inquiries or correspondence relating to or in reference to this RFP, and all reports, charges and proposal or referencing information submitted in response to this RFP shall become the property of the City and will not be returned. The City will use discretion with regard to disclosure of proprietary information contained in any response but cannot guarantee information will not be made public. As a governmental entity, the City is subject to making records available for disclosure.
19. All restrictions on the use of data contained within a proposal and all confidential information must be clearly stated in the RFP. Proprietary information submitted in a proposal, or in response to the RFP, will be handled in accordance with the Texas Open Records Law and other applicable state statutes.
20. It is the vendor's responsibility to check for any addendums that might have been issued before the proposal closing date and time.
21. The proposal evaluation process will occur after the closing date. The City's evaluation and clarification process will commence. An evaluation team will review the proposals. Financial terms will not be the sole determining factor in this award. Other criteria described in this RFP will be considered, as well as any other factors the evaluation team determines may affect the suitability of the proposal for the City's requirements. A Proposer's submission of a proposal constitutes their acceptance of the evaluation technique.
22. Proposers must comply with the minimum insurance requirements of the City of Lavon as appropriate to final contract terms. The minimum insurance requirements are noted in the sample agreement for professional services.

SPECIAL PROVISIONS

1. DISCLOSURE OF CONFLICT OF INTEREST AND COMPLIANCE WITH ALL OTHER APPLICABLE LAWS

Proposer shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Bidder/Proposer or the services and/or items to be provided, specifically and not limited to any laws relating to conflicts of interest. In particular, Bidder/Proposer is put on notice that City will require compliance with Chapter 176 of the Texas Local Government Code (hereinafter referred to as the "Act") requiring any person who contracts or seeks to contract with the City to disclose potential conflicts of interest as defined in the Act by completing the Conflict of Interest Questionnaire included in this bid proposal and returning it to the City in accordance with the provisions of the Act. Failure to comply with any applicable laws, including the provisions of the Act, may result in: i) the forfeiture by Bidder/Proposer of all benefits of the Contract; ii) the retainage by City of all services performed by Bidder/Proposer, and iii) the recovery by City of all consideration, or the value of all consideration, paid to Bidder/Proposer pursuant to any awarded contract.

The attached Conflict of Interest Questionnaire shall be submitted with the bid proposal submittal. It is the responsibility of the vendor to submit the form.

2. The successful proposer's rights and duties awarded by the contract may not be assigned to another without written consent of the City signed by the City's authorized agent. Such consent shall not relieve the assigned of liability in the event of default by the assignee.
3. Any deviations from specifications and alternate proposals must be clearly shown with complete information provided by the proposer. They may or may not be considered by the City.
4. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing and shall not be effective unless signed by an authorized representative of the City.
5. The City shall have the right to modify this order subject to an adjustment in the price in accordance with the applicable provisions of the purchase order, if any, or pursuant to mutual agreements. No agreement or understanding to modify this order shall be binding on the City unless it is in writing and signed by an authorized representative of the City.
6. The City reserves the right to require additional technical and pricing information and negotiate all elements which comprise the Vendor's proposal to ensure that the best possible consideration be afforded to all concerned. The City reserves the right to accept all or part of any proposal, to make multiple awards, to reject any or all proposals and to re-solicit for proposals.
7. All questions must be submitted via email by 12:00 p.m. on Monday, September 24, 2018, to Kim Dobbs, City Administrator at kim.dobbs@cityoflavon.org and Jason Hughes, Financial Advisor to the City at jason.hughes@hilltopsecurities.com prior to proposal closing date.

8. The following RFP Schedule of Events represents the best estimate of the schedule the City will follow. The City plans to meet the dates described below. If a component of the schedule is delayed, it shall be anticipated that the remaining components will be delayed by a similar number of days. Any significant change to the schedule will be published via RFP Addendum. The City's intention is to review the proposals and short-list firms for oral interviews, if necessary. After oral interviews the City intends to select an SAP Consultant/PID Administrator. However, the City's reserves the right to select an SAP Consultant and a different PID Administrator.

Event	Estimated Date
Request for Proposals Published	September 14, 2018
Deadline for Questions from Vendors	September 24, 2018
Final Addendum for Questions Published	September 28, 2018
Deadline for Proposal Submissions	October 5, 2018
Evaluation of Proposals	Week of October 8 th
Oral Interviews (if needed)	Week of October 8 th
City Council Approval	October 16, 2018

9. Proposers shall submit a total of five (5) work references.
10. Proposers shall fill out the following required documents, as noted in the bid proposal. If the following forms are not included, the bid proposal may be considered non-responsive.

Check List:

- Conflict of Interest Questionnaire
- Non-Exclusion Affidavit for General Contractors

DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION

Chapter 176 is an ethics law that requires certain local government officials to disclose employment and business relationships with vendors who conduct business with local government entities. The law defines a “vendor” as any person who enters or seeks to enter a contract with the city. The term also includes an agent of a vendor.

Local government officers subject to this law are a city council member, director, superintendent, administrator, president, city manager, or any other person who is designated as the executive officer of the local government entity. A municipal officer’s family member would include the officer’s spouse, father, mother, son, daughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, or step-child.

The law applies to any written contract for the sale or purchase of real property, goods, or services. A contract for services would include one for skilled or unskilled labor, or for professional services.

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has:

1. An employment or other business relationship with an officer or an officer’s family member that results in that person receiving taxable income that it more than \$2,500 in the preceding twelve months; or
2. Has given an officer or an officer’s family member one or more gifts totaling more than \$250 in the preceding twelve months.

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following:

1. The date the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or
2. The date the vendor becomes aware of a relationship or gives a gift to an officer or officer’s family member.

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.**2** 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship._____
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

 Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

 Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

 Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4_____
Signature of person doing business with the governmental entity_____
Date

Adopted 06/29/2007

Non-Exclusion Affidavit for General Contractors

Federal, state, and local government agencies, not-profits, and other organizations that use federal money to fund all or part of any program or project are required to follow specific requirements regarding the use of such federal funds. One of these requirements is that no contract, subcontract, grant, financial assistance, or other forms of assistance provided using federal funds may be awarded to individuals or entities that have been suspended, debarred, or otherwise excluded from participation in federally funded programs.

The U.S. federal government maintains a Web site known as the “System for Award Management” (SAM) at www.sam.gov. One of the purposes of the SAM Web site is to provide a comprehensive list of all individuals, firms, and other entities that have been suspended, debarred, or otherwise excluded from participation in federally funded contracts, subcontracts, grants, etc. SAM provides a simple means of helping government, non-profit agencies, and other organizations ensure that they do not award federally-funded grants, contracts, subcontracts, or other financial or non-financial benefits to any individual, firm, or other entity that has been excluded by any agency from participation in such federally funded activities.

I, _____ (Contractor Representative), hereby certify that neither I nor _____ (Name of the company or organization I represent) nor any subcontractors that I or said company may employ to work on any federally funded activity have been suspended, debarred, or otherwise excluded by any federal agency from participation in any federally funded activity. I further acknowledge my understanding that, before entering into a contract with me or with the company or organization I represent, City of Lavon staff will perform a search on www.sam.gov to verify whether I, the organization I represent, or any subcontractors I may employ to work on any federally funded activity, have been excluded from participation in any federally funded activity.

Signature of Contractor Representative

Date

Sworn to and subscribed before me this _____ day of _____, 20_____

Notary Public in and for _____ County, _____ (Insert State Name)

PROPOSAL EVALUATION

RFP shall be awarded to the best-value proposal. The proposals will be evaluated on the factors outlined below which shall be applied to all eligible, responsive proposals in selecting the successful proposer. Award of a contract may be made without discussion with proposers after responses are received. Proposals should, therefore, be submitted on the most favorable terms.

Sealed Proposal Submission

Proposals shall be sealed and clearly marked with the Proposer's name and return address and indicate the proposal number and title. Facsimile or e-mail submitted proposals will not be accepted. Proposals received after the deadline cannot be considered and will be returned unopened. The City is not responsible for delays by the U.S. Postal Service, the internal mail delivery system of the City, or any other delivery method employed by the Proposer.

Proposers or their authorized representatives are expected to be fully informed as to the general terms and conditions, requirements and specification of this Proposal Invitation before submitting proposals. Failure to do so will be at the proposer's own risk.

CRITERIA FOR EVALUATION IN ORDER OF IMPORTANCE:

- | | |
|---|-----|
| 1. Demonstrate the ability to provide the scope of services | 50% |
| 2. Experience and references | 35% |
| 3. Proposed fees | 15% |

Negotiations may be conducted with responsible proposers who submit proposals determined to be acceptable of being selected for award. **All proposers will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.** Revisions to proposals may be permitted after submission and before award for the purpose of obtaining best and final offers.

Scope of Work

The PID Administrator/SAP Consultant shall provide services to the City in accordance with the scope of services provided herein.

PID Administration shall incorporate a variety of different responsibilities that will be led by the PID Administrator including third-party contract development and administration, payment, coordination, City staff support, and coordination between parties. As part of this task, PID Administrator will coordinate and be present at key meetings for the PIDs. Additionally, if requested, PID Administrator will attend homeowner association meetings within each PID to provide background information and a general overview of the PIDs. PID Administrator will also be the point of contact for questions relating to invoicing, collecting of the assessments and provide materials and reports upon request.

Administrative and management support services associated with the annual determination of the special assessments to be collected from the property subject thereto. Services shall include but not be limited to subdivision parcel research, special assessment levy research, preparation of the annual assessment and calculation of administrative costs, city and county tax office communication, tracking of delinquent assessment fees and all required PID reporting.

1. Annual Special Assessment Determination
 - a. Verify ownership and ongoing conveyance dates
 - b. Develop and maintain a database for all relevant PID parcels
 - c. Identify PID expenses
 - d. Calculate and determine the Annual Assessment and the Special Assessment for each parcel
 - i. Conduct background research
 - ii. Calculate the annual installment to be collected
 - iii. Determine amendments to the Annual Assessment Roll
 - iv. Revise the Assessment Plan as needed
 - v. Provide support services related to billing of annual installments
 - vi. Make allowance for operational needs
 - vii. Prepare year-end reconciliations and annual reports to the City
 - viii. Work with and provide assistance to the City and County tax offices as needed
2. Bond Fund Administration
3. Homeowners Assistance/Public Information
4. Delinquency Management
 - a. Prepare and maintain a Delinquent Special Assessment Report
 - b. Follow up on all delinquent accounts
5. Disclosure Services
 - a. Prepare annual reports
 - b. Request quarterly reports required from Developer, as applicable
 - c. Prepare Significant Event Notices if needed
 - d. Disseminate all reports to each required entity, bondholder, etc.
6. Auditing Services

Submission

Each proposal must include the following components: Organizational Profile, Questionnaire, Proposed Services for PID Administration, SAP Consulting, and References. Each component shall include the information requested below.

Organizational Profile

1. Company name, address and contact information;
2. Federal Identification Number;
3. Overview of firm;
4. Individuals assigned to manage and execute the engagement (location and resources);
5. If company is a partnership, state the name and address of all general and limited partners associated with the office responding to the RFP; and
6. Any other useful information.

Questionnaire

Answer the following questions:

SAP Consultant

A. General

1. How many Texas municipal clients have you served, or currently serve, as SAP Consultant within the last 5 years?
2. Have you been replaced as SAP Consultant during or leading up to the creation of a PID? Please describe in detail why you were replaced.
3. If you have replaced another SAP Consultant in a PID creation and/or financing process, please describe the changes that you made which benefitted the municipal entity.
4. Please explain the assessment methodology/basis that your firm typically uses to assign benefit within a PID.
5. Please describe your typical methodology/approach when a TIRZ overlay is included in the PID finance plan.
6. Please describe your typical interaction with the City's finance team, as well as with the developer's team, in a PID creation and a related bond financing.
7. Please explain components of your general fee structure to serve as SAP Consultant, including up-front costs, retainers, other costs that are embedded within your fees (such as disclosure reporting, annual audit, etc.)
8. Please provide an example presentation that you have given to another Texas municipal client regarding your role as SAP Consultant.
9. Please provide an example Service and Assessment Plan that you have completed for another Texas municipal client.

PID Administrator

A. General

1. How many Texas municipal clients have you served, or currently serve, as PID Administrator within the last 5 years? How many of those clients are within the greater North Texas region.
2. Have you been replaced as PID Administrator on an existing PID? Please describe in detail why you were replaced.

3. Explain your relationship with the various North Texas Counties and the collection of assessments.
4. What is your role and the City's role in nonpayment and foreclosure?

B. Landowner/Assessments

1. Explain in detail the processes and procedures to inform land owners about assessments:
 - a. Developer
 - b. Initial Homeowner
 - c. Secondary Owners
2. How do landowners get information on their assessment? Please provide an example of typical information that you provide to landowners.
3. What interaction do you have with individual land owners?
4. What are your strategies for insuring new home owners are updated as properties change ownership, and databases are current?

C. Reporting/Regulatory

1. What reports do you provide to the City in relation to their budget, annual audit and SEC compliance? What format? How often are reports provided to the City? Please provide an example of reports you typically prepare on behalf of a municipal client.
2. How have you dealt with non-compliant quarterly reporting? Describe the instances and what your firm did to resolve the issue.
3. How have you handled SEC reporting for difficult or noncompliant landowners/developers?
4. In your experience, what audit requirements are the PID projects subject to?
5. What do provide for fiscal year end reports for annual audit? And how long after year end will those be available?

Proposed Fees for Services

Please provide proposed fees for complete services as described in the Scope of Work section for a one-year term. Proposed fees should be provided on an Excel spreadsheet with the following format:

Service	Price	Unit	Frequency*	Additional Info

*Frequency = One-time, Annual, Monthly, etc.

Proposers may also provide a separate “free form” recommendation on the fee structure that offers more or less service than outlined above. This proposal may be the result of the Proposer’s successful experience with other Texas PIDs.

References

Include five (5) work references with the following information: name of client, address, phone numbers/emails, dates of contract period, description of services provided and contract amounts.

Questions

Proposers are asked to examine this RFP upon request. All questions or clarifications shall only be directed in writing via e-mail to Kim Dobbs, City Administrator, and Jason Hughes, Financial Advisor, before the designated deadline for written questions. Questions received after the date specified above may not receive response. Any contact or attempt to contact any other employee of the City regarding this RFP may result in the immediate disqualification of the Proposer. Oral and other interpretations or clarifications will be without legal effect. Only questions answered by formal written addenda will be binding.

TERMINATION FOR DEFAULT

The City of Lavon reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the **contract** immediately in the event the successful proposer fails to:

- meet delivery or completion schedules
- otherwise perform in accordance with the accepted proposal and contract

Breach of contract or default authorizes the City to award to another proposer, purchase elsewhere, and charge the full increase in cost to the defaulting proposer.

NON-PERFORMANCE CONDITION

If the product or training is not in conformance with the specifications and requirements of the City, the vendor shall redo and complete any work necessary, bring the product or training into compliance at the vendor's expense.

NOTICE: The City of Lavon has drafted the following document (SAMPLE) that will serve as the agreement between the parties in the event of an award. Please review, edit and/or comment with your RFP response so that the City might consider BEFORE proceeding with a contract.

**PROFESSIONAL SERVICES AGREEMENT
[CONSULTANT'S NAME]**

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into by and between the **CITY OF LAVON** (the "City"), a general law Type A municipality organized under the laws of the State of Texas and **[CONSULTANT'S NAME]** ("Consultant" or "Consultant"), a Texas [Type of Company], each individually referred to as a "**party**" and collectively referred to as the "**parties.**"

CONTRACT DOCUMENTS:

The Contract documents shall include the following:

1. This Agreement for Professional Services
2. City's Request for Proposals including all attachments, specifications, and all addenda issued prior to execution of this Agreement;
3. Consultant's Executed Proposal in response to City's Request for Proposal;
4. Conflict of Interest Questionnaire Coversheet;
5. Conflict of Interest Questionnaire;
6. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Consultant in writing; and
7. All required Insurance Certificates.

All Exhibits attached hereto are incorporated herein and made a part of this Agreement for all purposes. In the event of any conflict between the contract documents, the terms and conditions of this Professional Services Agreement shall control.

1. SCOPE OF SERVICES.

Consultant hereby agrees to provide the City with professional services as PID Administrator/SAP Consultant for the City. Attached hereto and incorporated for all purposes incident to this Agreement is **Exhibit "A,"** Scope of Services, more specifically describing the services to be provided hereunder.

2. TERM.

The initial term of this Agreement shall commence on _____ ("Effective Date") and shall expire on _____ (the "Initial Term") unless terminated earlier in accordance with the provisions of this Agreement. The City may renew this Agreement for three (3) additional one (1) year terms (each a "Renewal Term") (collectively the "Term") at the City's sole option.

3. COMPENSATION.

Compensation shall be in accordance with the provisions of this Agreement and the Schedule attached as **Exhibit "B,"** which is incorporated for all purposes herein. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first approves such expenses in writing.

4. TERMINATION.

4.1. Written Notice.

The City or Consultant 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 the City in any fiscal period for any payments due hereunder, City will notify Consultant 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 the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the Expiration Date, the City shall pay Consultant for services actually rendered up to the effective date of termination and Consultant shall continue to provide the City with services requested by the City and in accordance with this Agreement up to the effective date of termination.

4.4 Breach

Subject to Section 27 herein, either party may terminate this Agreement for breach of duty, obligation or warranty upon exhaustion of all remedies set forth in Section 27.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

5.1 Disclosure of Conflicts.

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

5.2 Confidential Information.

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

5.3 Unauthorized Access.

Consultant 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. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised, in which event, Consultant shall, in good faith, use all commercially reasonable efforts to cooperate with the City in identifying what information has been accessed by unauthorized means and shall fully cooperate with the City to protect such information from further unauthorized disclosure.

6. RIGHT TO AUDIT.

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the Consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant

facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

7. INDEPENDENT CONSULTANT.

It is expressly understood and agreed that Consultant shall operate as an independent Consultant as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant 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 subcontractor. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, Consultants and subcontractor. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant. Neither Consultant, nor any of Consultant's employees or agents, shall be entitled to any benefits accorded to City's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay.

8. LIABILITY AND INDEMNIFICATION.

A. LIABILITY - CONSULTANT 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 CONSULTANT, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

B. GENERAL INDEMNIFICATION - CONSULTANT HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE 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 CONSULTANT'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 CONSULTANT, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

C. INTELLECTUAL PROPERTY INDEMNIFICATION – Seller agrees to defend, settle, or pay, at its own cost and expense, any claim or action against the 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 the City modifies or misuses the software and/or documentation. So long as Seller bears the cost and expense of payment for claims or actions against the City pursuant to this section, Seller 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 the City's

interest, and City agrees to cooperate with Seller 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 the City for infringement arising under this Agreement, the 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, Seller shall fully participate and cooperate with the City in defense of such claim or action. City agrees to give Seller timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, the City's assumption of payment of costs or expenses shall not eliminate Seller's duty to indemnify the 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, Seller 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 Seller, terminate this agreement, and refund all amounts paid to Seller by the City, subsequent to which termination City may seek any and all remedies available to City under law.

9. ASSIGNMENT AND SUBCONTRACTING.

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

10. INSURANCE.

Consultant shall provide the 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 accident on a combined single limit basis or
\$250,000 Bodily injury per person
\$500,000 Bodily injury per occurrence
\$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, 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) Statutory Worker's Compensation and Employers' Liability Insurance requirements per the amount required by statute. City agrees to waive this requirement upon receipt of sufficient

documentation from the Consultant certifying that Consultant is not required to maintain the requisite coverage in accordance with the statute.

- (d) Professional Liability (Errors & Omissions)
 - \$1,000,000 Each Claim Limit
 - \$1,000,000 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 contract. An annual certificate of insurance shall be submitted to the City to evidence coverage.

10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All policies except Workers' Compensation and Professional Liability shall be endorsed to name the City as an additional insured thereon, as its interests may appear. All policies shall contain a Waiver of Subrogation for the benefit of the City of Lavon. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. A minimum of thirty (30) days' notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the City Administrator, City of Lavon, 120 School Road, Lavon, Texas 75166.

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

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

12. 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:

To The CITY:

City of Lavon
Attn: City Manager
120 School Road
Lavon, Texas 75166

With a copy to:

Messer, Rockefeller & Fort, PLLC
Attn: Wm. Andrew Messer
6371 Preston Rd., Ste. 200
Frisco, Texas 75034
TEL: (972) 668-6400

To CONSULTANT:

13. SOLICITATION OF EMPLOYEES.

Neither the City nor Consultant 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 Consultant, 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.

14. GOVERNMENTAL POWERS.

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

15. NO WAIVER.

The failure of the City or Consultant 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 the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Collin County, Texas.

17. 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.

18. FORCE MAJEURE.

The City and Consultant 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 (force majeure), 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.

19. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. 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 hereto.

21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.

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

22. ENTIRETY OF AGREEMENT.

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, 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.

23. 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.

24. WARRANTY OF SERVICES.

Consultant 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 Consultant's option, Consultant shall either (a) use commercially reasonable efforts to re-perform the services in a manner that conforms to the warranty, or (b) refund the fees paid by the City to Consultant for the nonconforming services.

25. IMMIGRATION NATIONALITY ACT.

The City of Lavon actively supports the Immigration & Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Consultant shall verify the identity and employment eligibility of all employees who perform work under this Agreement. Consultant 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. Consultant 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. Consultant shall provide City with a certification letter that it has complied with the verification requirements required by this Agreement. Consultant 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 Consultant.

26. INFORMAL DISPUTE RESOLUTION.

Except in the event of termination pursuant to Section 4.2, if either City or Consultant has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, 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 commence the resolution process and make a good faith effort, either through email, mail, phone conference, in person meetings, or other reasonable 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 in Collin County, Texas, upon written consent of authorized representatives of both parties in accordance with the Industry Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. The mediator shall be agreed to by the parties. Each party shall be liable for its own expenses, including attorney's fees; however, the parties shall share equally in the costs of the mediation. 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. Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with this informal dispute resolution process, the parties agree to continue without delay all of their respective duties and obligations under this Agreement not affected by the dispute. Either party may, before or during the exercise of the informal dispute resolution process set forth herein, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests.

27. 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. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

[SIGNATURE PAGE FOLLOWS]

CITY:

CITY OF LAVON, TEXAS

By: _____
Name: Vickie Sanson
Title: Mayor

CONSULTANT:

[Consultant's Name]

By: _____
Name: _____
Title: _____