

**CITY OF LEON VALLEY, TX**  
**REQUEST FOR PROPOSALS**

*Consulting Services for Update of the 2018 Comprehensive Master Plan*



*Proposal Due Date:*

*Friday, February 14, 2020 – 3:00 p.m. CST*

# Article 1. Project Overview

**1.01 GENERAL:** The City of Leon Valley (the "City") seeks to update its Comprehensive Master Plan ("Comprehensive Plan") and is requesting proposals from qualified urban planning, urban economics, or similarly qualified consultants, hereinafter referred to as "Respondent." Respondents shall have experience rendering the tasks and services outlined in this request. The Respondent awarded the contract for this Comprehensive Plan update ("the Project") is herein referred to as "the Successful Respondent".

**1.02 COMMUNITY PROFILE:** The City of Leon Valley is a "Home-Rule" municipality of approximately 11,500 citizens. The City was incorporated in 1952 and is a first-tier suburb located just west of the San Antonio Medical Center on the northwest side of the San Antonio Metropolitan area. The City is "land-locked" and surrounded by the City of San Antonio on all borders.

Leon Valley occupies a unique environmental position within the region, with many areas of the City being located within a floodplain. Huebner Creek bisects the City and is currently under reconstruction to improve flood control. The City owns approximately 100-acres of parks and open-space which includes a 27-acre programmed recreational park and a scenic 36-acre undeveloped tract of land abutting Huebner Creek.

Leon Valley is primarily built-out and experienced its most rapid rate of growth between 1970 and 1980, with primarily low-density residential development. The City has seen mostly low-density commercial growth since. Residential development patterns consist primarily of conventional single-family homes, with some garden-style apartments and small-lot single-family subdivisions. The City's commercial areas are characterized by fast-food restaurants, business parks, and retail strip centers.

The City's conventional single-family neighborhoods are the stable backbone of the community, comprising approximately 70% of the City's land area. These neighborhoods are well maintained and have some opportunities for infill and redevelopment. The City does not have any "missing-middle" housing, as the term is generally understood.

The City's commercial areas however are aging, and some areas are distressed. Due to historically auto-oriented commercial development patterns, as well as limited land use regulation throughout the 1980's and 1990's; these areas are by characterized by pole signage, above ground utilities, parking lots, and one-story retail buildings that are considerably setback from the street.

The City's primary economic lifeline – Bandera Road – is a regional corridor that bisects the City and links northwest San Antonio and outer suburbs with Downtown San

Antonio. Bandera Road is one of the most congested State highways in Texas and is currently the focus of an interjurisdictional planning effort that includes the City of Leon Valley, City of San Antonio, and TxDOT. A multi-modal avenue or boulevard concept are among the long-term transportation improvements being considered for Bandera Road.

The City is also highly focused on economic development. Such efforts have historically been more focused on jobs and business recruitment. However, as a result of over 60 years of low-density, auto-oriented land-development patterns, which consist of large portions of properties being tied down by [non-revenue] producing land use patterns, such as parking lots and leftover, undevelopable patches of land; City leaders have grown increasingly concerned with the economics and fiscal impacts of urban density, development types, and lot utilization.

**1.03 PROJECT BACKGROUND:** The City's first Comprehensive Plan was created in 1970 but was never formally adopted. Subsequently, the City formally adopted its first Comprehensive Plan in 1986. This plan was primarily narrative based, featured some maps; but did not address the physical design of the city.

The 1986 plan received an update in 1992 which included a Conceptual Thoroughfare Plan that proposed limited new roadways and several cul-de-sacs in undeveloped areas. This update also addressed specific corridors and introduced Neighborhood Planning Areas, which has been a planning concept carried forward in subsequent updates.

The 1992 plan was further updated in 1999. This update did not contain any substantive conceptual changes but did update the plan with current information. The comprehensive plan received similar updates in 2003 and 2009.

Most recently, the plan was updated in January of 2018. This update carried forward the conceptual approaches of the previous plans but was more objective based than previous plans. The plan did not however address the topics of urban density, mixed-use, infill development, redevelopment, or fiscal impact. The plan also did not address the physical design of the City and did not adopt a new Thoroughfare Plan.

Since the adoption of this most recent update in 2018, the City has also resolved to overhaul its zoning code, which has not been substantially revised since adoption in 1974. However, the land use policy guidance of the 2018 Comprehensive Plan is limited only to the rezoning of some areas, utilizing the City's existing single-use zoning districts. This is a primary reason for this Comprehensive Plan update – the Comprehensive Plan should guide zoning.

The City has also received an influx of development challenges and opportunities, including mixed-use development proposals, for which the Comprehensive Plan does not provide guidance. Additionally, the City's primary thoroughfare - Bandera Road - is currently the focus of a long-range planning effort that includes a traffic engineering study initiated by TxDOT, and a Corridor Plan initiated by the City of San Antonio for portions of Bandera Road not in Leon Valley. The current Comprehensive Plan does little in the way of informing future land use and urban design on Bandera Road.

## **Article II. Project Scope**

**2.01 PURPOSE:** The City plans to overhaul its entire Comprehensive Plan in a phased approach over the next 2 to 3 years. The tasks outlined in this Project Scope represent the first phase in this overhaul. The successful Respondent will be tasked with updating and developing the specific components of the City's Comprehensive Plan detailed below in Section 2.03.

**2.02 INTENT:**

- A. The City's Comprehensive Plans have historically sought to *maintain* the existing character of the City. They have never addressed the physical form and design of the City however. This project resolves to physically *transform* the City, in a fiscally, environmentally, architecturally meaningful, and socially responsible way.
- B. The City's Comprehensive Plans have historically been limited to goals and objectives, without implementation steps. This project resolves to develop a "strategy-based plan" - similar to a business plan - which identifies problems, develops solutions, forecasts fiscal impacts, and maintains metrics for tracking progress and outcomes.

**2.03 PLANNING FRAMEWORK:** The City has historically maintained traditional Comprehensive Plans which contain the following typical planning components:

- |                                       |                                |
|---------------------------------------|--------------------------------|
| 1. <i>Land Use</i>                    | 4. <i>Economic Development</i> |
| 2. <i>Transportation</i>              | 5. <i>Quality of Life</i>      |
| 3. <i>Neighborhoods &amp; Housing</i> | 6. <i>Environment</i>          |

The City intends to separate its current Comprehensive Plan into two volumes: a "Core Plan"; and a "Supplemental Plan". The Core Plan will be the focus of this project. The Supplemental Plan will be updated or added in subsequent phases of the overall Comprehensive Plan overhaul process over the next 2 to 3 years.

A. THE CORE PLAN ELEMENTS

1. *Identity & Market:* New component to be developed. The most important element of the Project - expected to build consensus about the kind of City Leon Valley wants to be.
2. *Growth & Change:* New component to be developed. Expected to strategize *how* the City plans to grow and *where* the City Plans for change.
3. *Fiscal Impact:* New component to be developed. Expected to address cost and revenue impacts of existing and future development. Will inform and reinforce the *Growth & Change* and *Future Land Use* planning processes.
4. *(Future) Land Use:* Existing component to be updated. Expected to strategize types of development for growth areas.
5. *Transportation:* Existing component to be updated internally. Not included in the scope of this RFP.
6. *Milestones & Metrics:* New component to be developed. Expected to create a framework for scheduling, assigning responsibility, maintaining accountability, and measuring progress.

B. SUPPLEMENTAL PLAN ELEMENTS (existing – no update in this project)

- |                                     |                           |
|-------------------------------------|---------------------------|
| 1. <i>Neighborhoods and Housing</i> | 3. <i>Quality of Life</i> |
| 2. <i>Economic Development</i>      | 4. <i>Environment</i>     |

**2.04 PROJECT TASKS & SERVICES**

A. GENERAL

1. Community Engagement: Facilitate a neighborhood and business-based approach to public outreach and citizen participation, to include meetings, mailings, surveys, websites, and social media.
2. Meeting Presentations: Prepare and deliver presentations at public meetings including City Council, Planning and Zoning Commission, and Neighborhood meetings; and develop graphics and maps, and other similar media.
3. Research and Analysis: Perform research and consultation on best practices and perform analysis to support the development of plan elements.

4. Coordination: Coordinate with various departments of the City as necessary, including Public Works, Finance, Fire, and Police, to ascertain data. Also coordinate with other consultants working on separate but related projects.
5. Plan Elements: Prepare professionally written and graphically designed final documents with edited text, appropriate maps, graphics, and charts.
6. Document Approval: Present final documents to the City's Planning and Zoning Commission and City Council for final approval.

## B. SPECIFIC TO PLAN ELEMENTS

### 1. *Identity & Market:*

- a. Build consensus on the City's current identity, including:
  - i. problems that need to be solved;
  - ii. what the City is getting right that needs to be continued and capitalized on;
  - iii. what makes Leon Valley unique from other communities in the region – the City's "*secret sauce*";
  - iv. the City's *value proposition* to the region;
- b. Perform a market analysis of the City's *current* market for housing, businesses, venues, major employers, and real estate development;
- c. Build consensus on the City's *ideal* market for residents, businesses, venues, major employers, and real estate development;
- d. Identify the disparities between the City's *current* market and *ideal* market;
- e. Analyze the benefits and trade-offs of pursuing the City's *ideal* market relative to the *current* market in the short-term and long-term;
- f. Build consensus on the City's future identity (i.e. *sleepy, touristy, transit-oriented, pedestrian-oriented, high-density, hill-country-ish, hip, high-end, down-home, big name retailers, keep it local, or something else entirely*).
- g. Recommend strategies for marketing and rebranding the City, based on the identity the City plans to pursue.

### 2. *Growth & Change:*

- a. Perform a geological analysis on undeveloped, natural, and floodplain adjacent areas to determine suitability for future development;
- b. Build consensus on areas preferred for *change* and *stability*;

- c. Make recommendations on normalizing City boundaries and potential land-swaps with the City of San Antonio;
- d. Build consensus on preferred “Levels of Treatment” for Change Areas (i.e. strategic infill, greenfield, brownfield, tear-down redevelopment, existing building rehab);
- e. Build consensus on preferred “Scales of Urbanism” in Change Areas (i.e. regional scale, community scale, and neighborhood scale); addressing topics as such building height, proximity to the street and other buildings, population density, and vertical mix of uses);
- f. Build consensus on phasing of development in preferred Change areas including identification of catalytic areas;
- g. Make recommendations on the development of Urban Design Frameworks (UDF’s) for specific areas of the City;

3. *Fiscal Impact:*

- a. Develop a library of existing development types in the City (i.e. conventional single-family home, garden-style apartments, retail strip center), which analyzes architectural, spatial, fiscal, and infrastructural attributes;
- b. Perform a fiscal impact analysis of existing development types using *Envision Tomorrow*, or similar software, that analyzes the revenues and expenses they generate, in order to answer the following:
  - i. *Does the City’s existing development pay for itself?*
  - ii. *Are some types of development more fiscally viable than others?*
  - iii. *What are the benefits and trade-offs of some development types over others?*
- c. Develop a library of “best practice” development types based on consensus built during the *Identity & Market* and *Growth & Change* planning processes;
- d. Perform a fiscal impact analysis of preferred development types (developed during the Future Land Use Planning process) using *Envision Tomorrow*, or similar software, in order to illustrate the fiscal viability of the new Future Land Use Plan.

4. *Future Land Use:*

- a. Establish Future Land Use classifications based on consensus built for preferred Scales of Urbanism in the *Growth & Change* Planning process;
- b. Develop and build consensus on a Future Land Use plan utilizing this classification system;
- c. Assign and build consensus on preferred development types (existing and best practice) appropriate to each Future Land Use classification;
- d. Develop land use characteristics, design principles, street frontage types, mix of uses, and urban densities appropriate to each development type.

5. *Milestones & Metrics:*

- a. Develop an implementation action plan in table format that establishes timeframes, responsible parties, action types, and the area/neighborhood in the City the action is applicable to;
- b. Develop a process for annual reporting on progress and conformance to the Plan, in order to ensure transparency and accountability;
- c. Develop a spreadsheet in MS excel (or similar program) that uses key metrics to measure the fiscal impact of the implementation of the Plan.

C. ADDITIONAL TASKS

- 1. Organize supporting data and analyses such as the Market Study, Fiscal Impact Analysis, Stakeholder feedback, in a separate Appendix, so as not to weigh down individual Plan Elements.
- 2. Develop a technical memorandum that creates a high-level framework for the City's new Zoning Code, that includes the following topics:
  - a. new zoning district types
  - b. development types
  - c. street frontage types
  - d. design standards
- 3. Make recommendations on the prioritization of Supplemental Plan updates as well as new supplemental plans the successful Respondent believes necessary;

**2.05 PROJECT SCHEDULE:** The City seeks completion of the Project with a final presentation to the City Council in September of 2020. This schedule anticipates the following activities necessary to complete the project on time. Recommendations by the respondent for alternative scheduling and necessary activities are welcome.

Consultant Selection.....	Late-February 2020
Contract Completion.....	Mid-March 2020
Phase 1 – Project Initiation (data gathering, analyses, etc.).....	April 2020
Phase 2 – Community Engagement.....	May - July 2020
• Identity & Market.....	May 2020
• Growth & Identity.....	June 2020
• Future Land Use.....	July 2020
Phase 3 – Production of Final Documents.....	August 2020
Phase 4 – Plan Adoption Process.....	September 2020

**2.06 PROJECT STEERING:** The City anticipates the following structure for citizen and policy maker oversight during project development:

- A. CITY COUNCIL: The governing body responsible for final approval of the Project.
  - 1. To receive at least one (1) mid-project update by the successful Respondent; most likely following completion of the Identity & Market and Growth & Change planning phase.
  - 2. City Council to appoint a Comprehensive Plan Update Advisory Sub-Committee consisting of two (2) Council members to perform the following:
    - a. Attend Planning Zoning Commission meetings when the Project is discussed;
    - b. Attend neighborhood and business stakeholder meetings if possible;
    - c. Report to the City Council on Project progress.
- B. PLANNING & ZONING COMMISSION: The Planning and Zoning Commission will be the principal steering authority for the Project.
  - 1. The successful Respondent shall update the Commission on Project progress for feedback and guidance at the completion of each project phase;
  - 2. Staff shall update the Commission on Project progress at each regular zoning commission meeting and special meetings if applicable;
  - 3. The Planning and Zoning Commission shall appoint its own Comprehensive Plan Update Advisory Sub-Committee consisting of four (4) Commissioners members to perform the following:
    - a. Attend all neighborhood stakeholder meetings – two (2) Commissioners;

- b. Attend all business stakeholder meetings – two (2) Commissioners;
  - 4. Planning and Zoning Chair to provide monthly updates to the City Council at a regular Council meeting on Project progress
- D. ECONOMIC DEVELOPMENT ADVISORY COMMITTEE:
- 1. The EDC will appoint one (1) Committee member to perform the following:
    - a. Attend Planning Zoning Commission meetings when the Project is discussed to provide feedback on Project progress.

**2.07 PROJECT DELIVERABLES:**

A. FINAL “CORE PLAN” DOCUMENT:

- 1. Thirty (30) bound hard copy submissions;
- 2. One (1) electronic PDF submission;
- 3. All electronic files in native software format;

B. SUPPORTING DATA & ANALYSES:

- 1. The following to be provided in separate stand-alone Appendix format:
  - a. Market Analysis, Fiscal Impact Analysis, neighborhood and business stakeholder feedback, social media feedback, and survey feedback;
- 2. One (1) electronic PDF submission;
- 3. All electronic files in native software format;

C. ADDITIONAL DELIVERABLES:

- 1. Presentations delivered during the planning process in native software format;
- 2. Fiscal impact measurement tool in native software format.

## **Article III. Schedule**

**3.01 SOLICITATION SCHEDULE:** The City intends to follow the following solicitation timeline:

- A. Solicitation released.....January 10, 2020
- B. Deadline for questions.....January 24, 2020
- C. City responses to all questions or addendums.....January 31, 2020
- D. Response for solicitation due at or before 3:00 PM.....February 14, 2020

All questions regarding the solicitation shall be submitted in writing at or before 5:00 PM on the due date noted above. Questions shall be submitted to the City contact named herein. The City reserves the right to modify these dates. Notice of date change will be posted to the City's website.

**3.02 POINT OF CONTACT:** For questions or clarifications of specifications, you may contact:

Brandon Melland, AICP, CNU-a  
Planning and Zoning Director  
City of Leon Valley  
210.684.1391 ext.234  
[b.melland@leonvalleytexas.gov](mailto:b.melland@leonvalleytexas.gov)

**3.03 FINAL RESPONSE DUE DATE:** Signed and sealed responses are due at or before 3:00 PM, on the date noted above to the Office of the Purchasing Agent. Mail or carry sealed responses to:

**FedEX, UPS, or Hand Deliver to:**

City of Leon Valley  
Office of the Purchasing Agent  
6400 El Verde Road  
Leon Valley, Texas 78238

## **Article IV. Submittal Requirements**

**4.01 GENERAL:**

- A. The Respondent shall submit ten (10) paper copies of the submittal, not exceeding thirty (30) pages in length. One page shall be interpreted as one side of a printed, 8 1/2" X 11" sheet;
- B. The Respondent shall also submit three (3) USB drives, containing a complete copy of the Respondents submission in a common file format (PDF, RTF, TXT, DOC, XLS).

**4.02 SUBMITTAL FORM:** To achieve a uniform review process and to streamline comparability, submittals should be organized in the following manner:

- A. TITLE PAGE: Respondent Information;
- B. TABLE OF CONTENTS: Clearly identify the materials by tab and page number;
- C. ISSUES FACING LEON VALLEY: Respondent shall demonstrate their understanding of the unique issues facing the City of Leon Valley and how those issues will impact the update to the Comprehensive Plan;

- D. PROJECT TEAM EXPERIENCE: Provide detailed information on the proposed project team, including the percentage each team member will be working on the project;
- E. METHODOLOGY AND APPROACH: Respondent shall describe methods and approaches to be used in the Project, including but not limited to the following:
1. community engagement strategies, tools, and techniques;
  2. recommendations on how the citizen and staff steering committees should be utilized throughout the project;
  3. meeting facilitation tools and techniques;
  4. the process for drafting and revising the individual plan elements;
  5. the types of maps and graphics to be used;
  6. unique techniques successfully utilized on similar projects;
- F. TIMELINE: Respondent shall provide a detailed proposed schedule for the complete duration of the project per the specifications contained herein;
- G. COST PROPOSAL: The Respondent shall provide a cost proposal to provide the services in this Request for Proposals.
1. The Respondent shall also include an itemized not-to-exceed fee schedule to include travel and material expenses for each phase of the project, documents, and analyses as follows:
    - Phase 1 – Project Initiation, data gathering, fiscal impact & market analysis;
    - Phase 2 – Community Engagement:
      - a. Identity & Market
      - b. Growth & Change
      - c. Future Land Use
    - Phase 3 – Production of Final Document
    - Phase 4 - Plan Adoption Process
  2. The Respondent shall also provide a fee schedule for additional services which shall include an hourly rate for each team member or sub-contractor, reimbursable costs, and any other costs required to complete the Project.
- H. WORK SAMPLES: The Respondent shall include at least 3 completed projects demonstrating experience performing the tasks and services requested for this Project.

## **Article V. Evaluation and Award**

**5.01 COMMITTEE REVIEW:** The Planning and Zoning Commission will serve as the evaluation committee in the review of received submittals for solicitation. The Commission will use the following criteria in the scoring of each submittal:

- A. Demonstrated understanding of the issues facing Leon Valley; **20 Points**
- B. Experience on projects with emphasis on urban design and civic identity; **30 Points**
- C. Proposed fees; **20 Points**
- D. Experience on projects with emphasis on the relationship between land development patterns and fiscal impact. **30 Points**

**5.02 BEST VALUE EVALUATION:**

- A. The City reserves the right to modify, without notice, the evaluation structure and weighted criteria to accommodate these additional considerations to serve the best interest of the City.
- B. The City also reserves the right to reject any or all responses, delete portions of the response, accept any response deemed most beneficial, or to waive any irregularities or informalities in the response received that best serves the interest of the City.

**5.03 AWARD:** The City reserves the right to enter into an agreement or a purchase order with a single award, split awards, non-award, or use any combination that best serves the interest of the City. Award announcement will be made upon City Council approval of the evaluation committees' recommendation and executed agreement in substantial form as Exhibit "A" attached hereto.

**CITY OF LEON VALLEY**  
**STANDARD PROFESSIONAL SERVICES AGREEMENT**

THE STATE OF TEXAS   §  
  §  
BEXAR COUNTY           §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of Leon Valley, Texas, (the “City”) a Texas municipality, and \_\_\_\_\_ (“Professional”).

**Section 1. Duration.** This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

**Section 2. Scope of Work.**

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

**Section 3. Compensation.**

(A) The Professional shall be paid in the manner set forth in Exhibit “B” and as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Professional’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A) and accounted for in the total contract amount in Exhibit “B”. If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount and shall be paid upon approval by the City and submission by the Professional.

#### **Section 4. Changes to the Project Work; Additional Work.**

(A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are reasonably necessary to correct any errors or omissions contained in such work and brought to the Professional’s attention in a timely manner. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under the following paragraph.

(B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

#### **Section 5. Time of Completion.**

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

## **Section 6. Insurance.**

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit C, Professional shall maintain the following limits and types of insurance:

**Professional Liability Insurance:** professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

**Workers Compensation Insurance:** The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

**General Liability Insurance:** The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For bodily Injury and property damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for premises, operations, products and completed operations shall be \$1,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$1,000,000.

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Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

## **Section 7. Miscellaneous Provisions.**

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT

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LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) *Professional's Seal.* To the extent that the Professional has a professional seal it shall placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for

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any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(G) *Force Majeure*. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

## **Section 8. Termination.**

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Professional and City;
  - (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
  - (3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this
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Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination pursuant to any other paragraph herein above, or otherwise that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses incurred to date.

**Section 9. Indemnification. Professional shall indemnify, defend and hold harmless the City of Leon Valley, Texas and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as "Professional") (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional's liability to such employee or former**

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employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

**Section 10. Notices.** Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**Section 11. No Assignment.** Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

**Section 12. Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

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**Section 13. Waiver.** Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**Section 14. Governing Law; Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Bexar County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Bexar County, Texas.

**Section 15. Paragraph Headings; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and shall not be construed either more or less strongly against or for either party.

**Section 16. Binding Effect.** Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**Section 17. Gender.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

**Section 18. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 19. Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**Section 20. Entire Agreement.** It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the

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terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

**Section 21. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 22. Right To Audit.** City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time upon reasonable notice. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

**23. Dispute Resolution.** In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

**24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.** Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code. Please complete and provide a copy of Form CIQ and Form 1295 both available at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

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**25. Boycott Israel.** The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code Chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of this agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

**EXECUTED**, by the City on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY:**

**PROFESSIONAL:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY**

**PROFESSIONAL**

City of Leon Valley  
Attn: Purchasing

with a copy to: City Attorney  
City of Leon Valley, Texas  
Attn: Charles E. Zech  
2517 N. Main Avenue  
San Antonio, Texas 78212

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