

**REQUEST FOR QUALIFICATIONS  
FOR  
PROFESSIONAL ENGINEERING SERVICES  
CITY-WIDE ROADWAY IMPROVEMENT PROGRAM  
CIP NO.: 22-006  
CITY OF PRAIRIE VIEW, TEXAS**

The City of Prairie View (CoPV) is seeking written responses to a Request for Qualifications (RFQ) to retain an Engineering firm for design services necessary for the City-Wide Roadway Improvement Program limited to a portion of Prairie Gables and Villa Capri Subdivisions.

Sealed responses addressed to the City of Prairie View must be received **BEFORE FRIDAY, June 10, 2022, 4:00 PM, CDT**, at 44500 Business Highway 290 Prairie View, TX 77446. All Responses must be in the CoPV's possession on or before the scheduled date and time (no late response will be considered). Responses submitted to the City of Prairie View must be submitted before the due date and time. **The City of Prairie View is not open for weekend or holiday deliveries.**

**The response documents can be obtained either by contacting City Hall, 44500 Business Highway 290, Prairie View, TX 77446 or by calling the City Secretary Office at (936) 857-3711, or Trilogy Engineering Services, 650 N. Sam Houston Parkway E, Suite 300 Houston, TX, 77060.**

The contract will be awarded to the Respondent(s) on the basis of demonstrated competence and qualifications to perform the goods/services at a negotiated and reasonable price. The professional fees under the contract may not exceed any maximum provided by law.

The CoPV reserves the right to refuse and reject any or all responses, waive any or all formalities or technicalities, accept the response or portions of the response determined to be the best value and most advantageous to the CoPV, and hold the responses for a period of 120 days without taking action. Respondents are required to hold their responses firm for the same period of time.

**Hand-delivered & Courier Submissions:**

City Secretary, Terralyn May  
44500 Business Highway 290, Prairie View, TX 77446

**LABELING INSTRUCTIONS:** Envelopes must be clearly marked:

**REQUEST FOR QUALIFICATIONS  
For Professional Engineering Services  
CITY-WIDE ROADWAY IMPROVEMENT PROGRAM, CIP#22-006  
[NAME OF FIRM]  
[PHONE NUMBER OF FIRM]  
[NAME OF PROJECT MANAGER FOR FIRM]**

**PART I**  
**GENERAL INFORMATION**

**1. Project Description:**

The purpose of the RFQ is to provide prospective firms, with essential information to enable them to prepare and submit qualifications to provide Engineering services to the City of Prairie View. These services will primarily be performed for:

- Roadway geometric improvements,
- Pavement structural improvements, and
- Drainage improvements.

There are six (6) streets in the Prairie Gables Subdivision and one (1) street in Villa Capri Subdivision that have been identified as a transportation priority for capital improvement projects. Those streets are structurally and geometrically deficient. The roadway pavement width is narrow (15 ft.), has some improper cross sections, exhibits surface and subsurface structural problems, and surface drainage problems. Based on the visual inspection, the condition statistics of those streets are very poor, and the degree of severity is high. The PASER rating is from 1 (Failed) to 2 (Poor), and the OC rating is also F (Failed).

<b>Solicitation Release Date</b> _____	<b>May 18, 2022</b>
<b>Second Notification Date</b> _____	<b>May 25, 2022</b>
<b>Pre-Submittal Meeting (1:00 PM)</b> _____	<b>May 31, 2022</b>
<b>Deadline for Questions (4:00 PM)</b> _____	<b>June 03, 2022</b>
<b>City's Response to Questions (4:00 PM)</b> _____	<b>June 06, 2022</b>
<b>Submittal Deadline (4:00 PM)</b> _____	<b>June 10, 2022</b>
<b>Anticipated Selection Date</b> _____	<b>July 05, 2022</b>

**2. Project Timeline:**

Design and construction documents for this project shall be completed by October 2022. Construction of this project shall begin in December 2022 and be completed by May 2023.

**3. CONFLICT OF INTEREST:**

Effective March 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict-of-Interest Questionnaire form is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Completed Conflict of Interest Questionnaires may be mailed or delivered by hand to the City Secretary. If mailing a completed form, please mail to:

**City of Prairie View**  
**City Secretary**  
**44500 Business Highway 290**  
**Prairie View, TX 77446**

- 3.1.** Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the vendor's Submittal.

**PART II**  
**STANDARD TERMS AND CONDITIONS**

See Attachment A

**PART III**  
**SUBMITTAL INSTRUCTIONS**

**1. SUBMITTAL SCHEDULE:**

It is the City's intent to comply with the following Submittal timeline:

Solicitation Release Date	<u>May 18, 2022</u>
Second Notification Date	<u>May 25, 2022</u>
Pre-Submittal Meeting (1:00 PM)	<u>May 31, 2022</u>
Deadline for Questions (4:00 PM)	<u>June 03, 2022</u>
City's Response to Questions (4:00 PM)	<u>June 06, 2022</u>
Submittal Deadline (4:00 PM)	<u>June 10, 2022</u>
Anticipated Selection Date	<u>July 05, 2022</u>

**NOTE:** These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective Responders.

- 1.1. All questions regarding the Request for Qualifications shall be submitted in writing electronically by 4:00 PM CST on June 03, 2022 to:

Jong Seong, PE	Ramiro Bautista, Ph.D
Trilogy Engineering Services (City Engineer)	City of Prairie View, Project Manager
877-463-1699	936-857-3711
<a href="mailto:seongjh@trilogyengineers.com">seongjh@trilogyengineers.com</a>	<a href="mailto:projectmanagement@prairieviewtexas.gov">projectmanagement@prairieviewtexas.gov</a>

All registered participating firms will be provided with a copy of the questions submitted and the City's response.

**2. SUBMITTAL DUE DATE:**

Sealed Submittals are due no later than **4:00 PM** on June 10, 2022 to the City of Prairie View. Submittals received after this time and date will not be considered. Mail or carry sealed Submittals to:

**City of Prairie View  
City Secretary  
44500 Business Highway 290  
Prairie View, TX 77446**

- 2.1. Sealed Submittals shall be clearly marked:

**REQUEST FOR QUALIFICATIONS**  
For Professional Engineering Services  
CITY-WIDE ROADWAY IMPROVEMENT PROGRAM, CIP#22-006  
[NAME OF FIRM]  
[PHONE NUMBER OF FIRM]  
[NAME OF PROJECT MANAGER FOR FIRM]

- 2.2. Facsimile or electronically transmitted Submittals are **not acceptable**.  
2.3. Each Submittal shall contain one (1) original and one (1) digital copy (PDF) on a USB drive.

### 3. **SUBMITTAL FORMAT:**

It is intended that this RFQ describe the requirements and submittal format in sufficient detail to secure comparable submittals. Interested and qualified firms shall:

- 3.1. Submit one (1) original and one (1) digital copy of materials that demonstrate experience in performing projects of this scale and complexity.
  - 3.1.1. Submittal document shall not exceed eight (8) single sided pages (excluding transmittal letter, index sheets, insurance certificates, financial statements, litigation summaries, and supporting appendices, if any). A page is considered 8.5" x 11", single-sided, 10-point font size (or larger), double-spaced and in portrait orientation.
- 3.2. Submittals to the RFQ shall require the consultant to provide sufficient information to determine that the Responder understands the City of Prairie View's general vision for the scope of work. **Responding firms shall deliver Submittals in the following format and sequence:**

#### **Letter of Submittal:**

- 3.2.1. A brief statement of understanding of the RFQ and commitment to perform the services requested within the response.
- 3.2.2. A brief summary of the types of professional services for which the respondent wishes to be considered.
- 3.2.3. Name of the principal point(s) of contact for the respondent (i.e., firm, title, physical address, fax number, phone number, and e-mail address). State whether the contact person is authorized to bind the firm. If the signer of the transmittal letter is not so authorized, identify the person(s) authorized to execute contracts on behalf of the firm(s).

#### **Proposal**

##### **Executive Summary:**

##### **Statement of Work:**

- 3.2.4. A statement of the firm's understanding of the Project objectives.
- 3.2.5. Describe the firm's approach to performing all of the Scope of Services being proposed.
- 3.2.6. A statement of the Firm's potential project approach.
- 3.2.7. A statement of the existence of or potential for any conflict of interest with any work the firm might perform for the City.

##### **Project Organization:**

- 3.2.8. Provide the Corporate name(s), responsible corporate officer(s) who would be responsible for the work, office location(s) where the majority of the work would be performed/ and the general capabilities of the firm(s) for the **lead firm**.
- 3.2.9. Provide the Corporate name(s), responsible corporate officer(s) who would be responsible for the work, office location(s) where the majority of the work would be performed/ and the general capabilities of the firm(s) for **sub-consultant(s)** (any entities that will be responsible for at least 2% of the billable work).
- 3.2.10. Project organizational structure (including the proposed project manager(s) and key personnel to be committed to specific project disciplines).
- 3.2.11. Listing of attached resumes of key personnel listing roles and responsibilities

(including professional credentials that demonstrate competencies directly related to the Scope of Services being proposed.) [Attached resumes are not included in 8-page limit for proposal.]

- 3.2.12. Current workload of key personnel and percent of time anticipated for this assignment.

**Past Project Experience:**

- 3.2.13. A list of experience of the firm in providing comparable services for projects of comparable size and scope.
- 3.2.14. A list of project references with names, addresses, phone numbers and e-mail addresses. [Minimum of 2]

**Insurance:**

- 3.2.15. Certificates of insurance evidencing minimum coverage for the types and limits of liability specified in this RFQ. [Not included in 8-page limit for proposal]

**Litigation Summary:**

- 3.2.16. Summary of current or past project-necessitated litigation pursued by or brought against the firm in the previous five (5) years. [Not included in 8-page limit for proposal]

- 3.3. Submission of a Response to this RFQ shall affirm that the vendor shall not discriminate against any employee or applicant for employment because of race, religion, sex, sexual orientation, color, or national origin and that the firm will make efforts to ensure that employment is offered to applicants without regard to race, religion, sexual orientation, color, and national origin.
- 3.4. A Responder may withdraw their Submittal by submitting a written request for its withdrawal by the signature of an authorized individual as described above, to the Internal Services Manager any time prior to the submission deadline. The prospective Responder may thereafter offer a new Submittal prior to the deadline. Modifications offered in any manner will not be considered if submitted after the deadline.

**4. CONFIDENTIALITY OF RESPONSE CONTENT:**

All Submittals offered in response to this RFQ shall be held confidential until an agreement is awarded. Following the agreement award, Submittals are subject to release as public information unless the Submittal or specific parts of the Submittal can be shown to be exempt from the Texas Public Information Act. Responders are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Responders.

- 4.1. If a Responder believes that a Submittal or parts of a Submittal are confidential, then the Responder shall so specify. The Responder shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Submittal, which the Responder believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Submittals and parts of Submittals that are not marked as confidential will be automatically considered public information after the agreement is awarded.
- 4.2. All Submittals become the property of the City and will not be returned to the vendor.

**5. CLARIFICATION OF SUBMITTAL:**

The City, in its sole discretion, expressly reserves the right to request and/or require any additional information from the Responder(s) that it deems relevant with respect to this RFQ. The contents of the Submittal and any clarification or counter Submittal thereto submitted by the successful vendor shall become part of the contractual obligation and incorporated by reference into the ensuing contract.

**6. EVALUATION CRITERIA:**

Firms submitting Qualifications to perform roadway design and related drainage design will be evaluated based upon the firm's experience, proposed personnel experience, personnel, knowledge, and familiarity with projects in the typical scope of work.

Sub-consultants associated with survey and geotechnical or other design disciplines must be listed in the Statement of Qualifications.

Additional criteria that may be used to select an engineer may include:

- 6.1 The engineering firm shall exhibit an understanding of existing conditions, systems, operations, and schedules.
- 6.2 Qualifications of the design professionals.
- 6.3 The number of past projects completed by the engineering firm that are similar to this one in scope or complexity.
- 6.4 The quality and performance of engineering firm's past projects. [Based on list of recent projects provided in Proposal.]
- 6.5 Experience working with roadway designs, construction, and performance and data interpretation.
- 6.6 Demonstrated ability to deliver projects on-time within a tight schedule, and commitment to meet the project schedule.
- 6.7 Knowledge of Design and Construction for Roadways and the related Drainage.

**7. EVALUATION PROCESS:**

A committee selected by the City will review the Submittals to the RFQ and may develop a shortlist of firms/teams. Interviews may be conducted with any responding firms/teams to discuss their qualifications, resources, and availability to provide the services requested.

- 7.1 If selection committee deems that no qualified firms have responded, the RFQ will be reissued at a later date.
- 7.2 The City will not provide compensation or defray any cost incurred by any firm related to the Submittal of this request.
- 7.3 The City reserves the right to negotiate with any and all persons or firms.
- 7.4 The City also reserves the right to reject any or all Submittals, or to accept any Submittal

deemed most advantageous, or to waive any irregularities or informalities in the Submittal received, and to revise the process and/or schedule as circumstances require.

**8. EX PARTE COMMUNICATION:**

Please note that to insure the proper and fair evaluation of a Submittal, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Responder to a City Official or Employee evaluating or considering the Submittal prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until **4:00 PM** on the day specified as the deadline for questions. Any communication between Responder and the City after the deadline for questions will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Submittal. Ex parte communication may be grounds for disqualifying the offending Responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

**PART IV**  
**SCOPE OF WORK**

**1. PROJECT SCOPE:**

The City of Prairie View is requesting Statements of Qualifications from qualified firms who can demonstrate that they have the resources, experience, and qualifications to enter into Professional Services Agreements, pursuant to Texas Government Code to perform permitting, design, bidding, and construction administration services for the design of Roadway & Drainage Improvements.

Professional services for this project include, but are not limited to:

- a. Hold Public Information to obtain City and local stakeholder feedback Response to comments and be present at a public meeting.
- b. Develop maintenance and protection of traffic plan.
- c. Present boring and geo-technical study results.
- d. Identify property impacts, wall, and permit needs. Permits prepared and submitted if needed.
- e. Plans, sections, and profiles to be developed at 1" = 40' horizontal and 1" = 4' vertical scale
- f. Prepare engineers opinion of probable cost
- g. Complete drainage design drawings and calculations
- h. Coordinate utility relocation with impacted utilities as required
- i. Prepare Drawings, Specifications and Contract Documents
- j. No sanitary sewer work except to adjust MH frames will be needed. MH adjustments to be included as part of contractor work
- k. Utility impacts to electric, telephone, cable, water, gas, etc., due to project construction, will be coordinated by consultant through utility meetings. No designs or construction documents are anticipated to address utility work.
- l. All permit fees and police protection for traffic control, if needed, to be paid by the City
- m. Drawings may consist or contain the following minimum information :
  - Title sheet
  - Index Plan and survey tie sheet
  - Roadway Drawings
  - Roadway Typical Sections
  - Traffic Detour Plan
  - Plans & Profiles
  - Grading Plan Cross Sections
  - Erosion Control Plan and Details
- n. Soil Borings shall be obtained where in the opinion of the design engineer they are needed. The geotechnical engineer may select soil sampling techniques other than boring, if desired.
- o. Plans shall be designed in accordance with the latest edition of the American Association of State Highways and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets or the Texas Department of Transportation's Highway Design Manual to comply with the requirements.
- p. Design exceptions shall be coordinated with the City – the Texas Department of Transportation or Waller County will not be involved in the exception process.
- q. The service life of the proposed improvements shall be a minimum of twenty (20) years.
- r. Finalize and complete : typical sections, plans, profiles, cross-sections, and details for proposed roadway improvements.
- s. Provide all computations for roadway modifications; include site restoration of areas disturbed during construction.
- t. Provide a maintenance and Protection of Traffic scheme.
- u. Design connection of the new drainage system to the existing one.



- v. Prepare final drainage, catch basin interception and drainage design calculations.
- w. Prepare final quantity and engineers' opinion of probable cost.
- x. Prepare the technical section of the Contract Document. It is assumed that the City would be responsible for the incorporation of the technical section into the City Standard Contract Documents.
- y. Apply for and obtain State and Local permits.
- z. Prepare Bid Forms for the use by Contractors wishing to bid the Project.
- aa. Provide final Design and Survey drawings to City in CAD format.
- bb. Engineering services during construction will be required by the City. Scope of these services will be determined at the time the contract is let for bidding.

**PROJECT MANAGEMENT:**

The selected responder shall provide a Project Manager for the duration of the Project. The Project Manager shall work closely with the City to develop a project plan, statement of work and other documents required of the successful construction contractor for this project.

**PART V**  
**INVOICING AND PAYMENT**

1. **INVOICING**: Consultant shall submit one original and one copy of each invoice on a monthly basis to the following address:

**City of Prairie View  
City Secretary  
44500 Business Highway 290  
Prairie View, TX 77446**

2. **PROMPT PAYMENT POLICY**: Payments shall be made within thirty days after the City receives the supplies, materials, equipment, or the day on which the performance of services was completed or the day on which the City receives a correct invoice for the supplies, materials, equipment, or services, whichever is later. The Consultant may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply to payments made by the City in the event:
  - 2.1. There is a bona fide dispute between the City and Consultant concerning the supplies, materials, services, or equipment delivered or the services performed that causes the payment to be late; or
  - 2.2. The terms of a federal agreement, grant, regulation, or statute prevent the City from making a timely payment with Federal Funds; or
  - 2.3. There is a bona fide dispute between the Consultant and a subconsultant or between a subconsultant and its suppliers concerning supplies, material, or equipment delivered or the services performed which caused the payment to be late; or
  - 2.4. The invoice is not mailed to the City in strict accordance with instructions, if any, on the purchase order or agreement or other such contractual agreement.

## ATTACHMENT A

**PROFESSIONAL SERVICES AGREEMENT  
FOR**

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STATE OF TEXAS           §  
                                          §  
COUNTY OF WALLER       §

This Agreement is entered into by and between the City of Prairie View, a Texas Municipal Corporation (“City”), acting by and through its Mayor, and \_\_\_\_\_ (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

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

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

“Mayor” shall mean the Mayor and/or his designee.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_.

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

**III. SCOPE OF SERVICES**

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in City of Prairie View Surveying and Engineering Design Proposal for Villa Capri Subdivision attached hereto as Exhibit A and which are incorporated by reference as if written and copied herein.

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

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Mayor, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \_\_\_\_\_ as total compensation, to be paid to Consultant as further detailed in Exhibit B.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the Mayor. Payment will be made to Consultant following written approval of the final work products and services by the Mayor. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

#### **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

#### **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City

may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

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

## VII. TERMINATION

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

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

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

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

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

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

## VIII. NOTICE

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

If intended for City, to: City of Prairie View  
Attn: Mayor  
44500 Business Highway 290  
P.O. Box 817  
Prairie View, Texas 77446

If intended for Consultant, to: **Name, Address**

## IX. INSURANCE

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

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

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

City of Prairie View

### **Insurance Requirements**

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

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

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



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

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

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

City of Prairie View

Attn: Mayor  
44500 Business Highway 290  
P.O. Box 817  
Prairie View, Texas 77446

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

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

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

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

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

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

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

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

## X. INDEMNIFICATION

**10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT’S agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT’S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee,**

**consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.**

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

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

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

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

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

## **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

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

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

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

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

## **XII. INDEPENDENT CONTRACTOR**

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

### **XIII. CONFLICT OF INTEREST**

13.1 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City.

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

### **XIV. AMENDMENTS**

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

### **XV. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Prairie View, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XVI. LICENSES/CERTIFICATIONS**

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

### **XVII. COMPLIANCE**

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

### **XVIII. NONWAIVER OF PERFORMANCE**

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

### **XIX. LAW APPLICABLE**

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

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

### **XX. LEGAL AUTHORITY**

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

### **XXI. PARTIES BOUND**

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

### **XXII. CAPTIONS**

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

### **XXIII. INCORPORATION OF EXHIBITS**

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

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

#### **XXIV. ENTIRE AGREEMENT**

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

#### **XXV. MISCELLANEOUS CITY CODE PROVISIONS**

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

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

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

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

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

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

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

**CITY OF PRAIRIE  
VIEW**

**CONSULTANT**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

Printed Name: Brian Rowland

Printed Name: \_\_\_\_\_

Title: Mayor

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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