

REQUEST FOR QUALIFICATIONS

FOR

**P3 Financial and Transactional Advisor Services
8/25/2021**



Offeror acknowledges receipts of the following ADDENDA:

Addendum No. 1 Dated _____	Received _____
Addendum No. 2 Dated _____	Received _____
Addendum No. 3 Dated _____	Received _____
Addendum No. 4 Dated _____	Received _____
Addendum No. 5 Dated _____	Received _____

ISSUE DATE: August 25, 2021
TO: Financial and Transactional Advisor
FROM: Trey Fletcher, Deputy City Manager
City of Pflugerville
SUBJECT: Request for Statements of Qualifications for P3 Financial and Transactional
Advisor Services

The City of Pflugerville is requesting a Statement of Qualifications (SOQs) for Public Private Partnership (P3) Financial and Transactional Advisor Services associated with the development of a Civic Center that includes a city hall, recreation center and mixed-use development. Enclosed for your consideration is a Request for Statement of Qualifications (RFQ).

To be considered for this project, your firm must meet the qualifications and satisfy the requirements set forth in the RFQ. If you are interested in being considered, please **submit your SOQ by 4 p.m., Monday, September 20, 2021**, to the person listed below. The submission date for questions, clarifications, or **requests for general information is 4 p.m., Wednesday, September 15, 2021**. Any requests received after this date will be returned and not addressed. Note that all questions, clarifications, or **request for general information are to be in writing via email** to the following address: citymanager@pflugervilletx.gov.

A committee consisting of City of Pflugerville staff will rate the SOQs using the evaluation criteria developed for this project. Said evaluation criteria are attached to this RFQ. The selection committee may interview one or more firms to further evaluate qualifications. The selection committee will present their recommendations to the City Council who will select the consultant for this project.

Any questions and correspondence should be directed to:

Mr. Trey Fletcher
Deputy City Manager
City of Pflugerville
citymanager@pflugervilletx.gov

Contact regarding this project with any City of Pflugerville personnel or officials other than Mr. Trey Fletcher or his designated representative after the issue date of this RFQ will be grounds for removal of the firm from consideration.

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**REQUEST FOR STATEMENT OF QUALIFICATIONS
City of Pflugerville Professional Services for
P3 Financial and Transactional Advisor Services**

I. INTRODUCTION

A. General Information

The City of Pflugerville is requesting Statement of Qualifications (SOQs) for Public Private Partnership (P3) Financial and Transactional Advisor Services associated with the development of a Civic Center that includes a city hall, recreation center and mixed-use development. The proposed project is planned to be located at the northwest corner of Pecan Street and FM 685 as shown in the Figure below.



There is no expressed or implied obligation for the City of Pflugerville to reimburse responding firms for any expenses incurred in the preparation of a SOQ in response to this request. The City reserves the right to increase or decrease the scope of work related to this project as outlined in this RFQ after a firm is selected to accommodate changes in the needs of the City and serve the best interests of the City.

The following information is offered as the overall scope of work. The intent of this Request for Qualifications (RFQ) is to provide information so that RESPONDENT can define the level of expertise, experience, personnel and approach necessary to perform the required services in a timely, cost-effective and professional manner.

B. Submittal Requirements

To be considered, submit your electronic SOQ, by 4 p.m. on Monday, September 20, 2021 to citymanager@pflugervilletx.gov. The City of Pflugerville reserves the right to reject any or all SOQs submitted. The email shall include "P3 Financial and Transactional Advisor Services RFQ" in the subject line.

C. Evaluation and Selection

SOQs submitted will be evaluated by a committee consisting of City of Pflugerville staff and its designated representatives. During the evaluation process, the City of Pflugerville and/or its designated representatives reserve the right, where it may serve the City of Pflugerville's best interest, to request additional information or clarifications from responders, or to allow corrections of errors or omissions.

Review of Proposals:

1. The committee will review the SOQs at its earliest convenience after the submittal deadline date.
2. The SOQs will be reviewed and rated relative to the evaluation criteria established for this project. Said evaluation criteria are attached to this RFQ.
3. If necessary, the committee may invite one or more responsive firms to make a presentation before the committee.
4. After completing the evaluation process, the committee will recommend the firm deemed the most qualified to City Council for consultant selection.
5. City Council will consider the committee recommendation and award a professional services agreement at its earliest convenience, as necessary.
6. Following consultant selection, de-briefing meetings with City staff will be available only if time permits and will be by appointment with the City's Project Manager.
7. The City reserves the right to reject any or all Statement of Qualifications. The highest ranked Respondent(s) may be invited to enter into Contract negotiations with the City. The standard Professional Services Agreement can be found in Exhibit "C". Any proposed changes to this Agreement for discussion during negotiations must be submitted with the SOQ. Any proposed changes to the Agreement submitted after the acceptance of the SOQ will not be considered by the City and the City reserves the right to reject the SOQ. If an agreement cannot be reached with the highest ranked Respondent, the City shall notify the Respondent and terminate negotiations. The second highest respondent may be contacted for negotiations. The process may continue until successful negotiations are achieved. The City reserves the right to terminate negotiations with any and all Respondents should it be in the City's best interest.

II. NATURE OF SERVICES REQUIRED

A. General

The City of Pflugerville is soliciting services for P3 Financial and Transactional Advisor Services to accomplish the tasks outlined in this RFQ. This project is to be performed in accordance with the provisions contained in this Request for Statement of Qualifications.

Please submit a statement of qualifications to provide P3 Financial and Transactional Advisor Services for the City's proposed Civic Center to be located at the northwest corner of Pecan Street and FM 685.

B. Background

In recognizing the need for a new City Hall and recreational facilities to support a rapidly expanding population, the City of Pflugerville has been working toward identifying and purchasing land to support these projects.

The following steps have been taken to support the proposed project:

- On November 3, 2020, the citizens of Pflugerville approved Proposition C to allow the issuance of \$47.3M for a recreation and senior center as well as Proposition B allowing land acquisition for recreation space totaling \$5.6M.
- In 2021, the City negotiated and has secured a purchase and sale agreement for 29 +/- acres of land located at the northwest corner of Pecan Street and FM 685.
- In July 2021, the Pflugerville City Council approved a resolution to appoint a bond committee, in order to provide a recommendation regarding the purchase of land for a new city hall, a voter-approved recreation center, and related economic development projects.
- In August 2021, the bond committee made a recommendation to the City Council recommending the approval of the purchase of the land at FM 685 and Pecan Street for the creation of a civic center that includes a city hall, recreation center, and mixed used development, using a combination of cash reserves and General Obligation (G.O.) bonds, not to exceed \$10 million, and utilize a competitive process to explore market driven opportunities for the creation of a civic and mixed-use center with the incorporation of a citizen advisory committee.
- In August 2021, the City Council voted to amend the proposed FY22 budget to incorporate the purchase of the land to support the civic center and then subsequently adopted the FY22 budget. Conceptual layouts of the proposed Civic Center development evaluated by the bond committee can be found in Appendix D.

The City of Pflugerville is currently working with CBRE to broker the land purchase as well as develop a Request for Proposals to request P3 proposals from interested parties for the ultimate development of the civic center to include a city hall, recreation center, and mixed used development. The P3 Financial and Transactional Advisor will provide input and draft the RFP per the scope of services listed below.

Funding for the City Hall portion of the Civic Center project may come from a future general obligation bond election once the terms of a proposed P3 agreement are better defined.

C. Scope of Services:

The City of Pflugerville will require the selected firm to advise the City on all financial and commercial issues associated with the successful preparation, procurement and closing of the P3 for the Civic Center. The scope of work to be undertaken includes, but is not limited to:

1. Procurement Preparation

- Developing refined financial analysis to guide scoping discussions and to define affordability ceiling;
- Assisting in project scoping and value engineering;
- Developing the procurement strategy;
- Developing a risk assessment to inform risk allocation and financial analysis;
- Leading the P3 RFP preparation process;
- Structuring of submission requirements and evaluation criteria;

- Developing objectives and recommendations on all key commercial issues in the P3 RFP;
- Reviewing and commenting on the draft Project Agreement;
- Developing recommendations on all key commercial issues in the Project Agreement (including the risk allocation, structuring of supervening events, structuring of termination clauses and payment mechanism);
- Advising and preparing materials (as appropriate) for interactions with stakeholders and decisionmakers.

2. Procurement

- Reviewing and advising on proposer inquiries and other interactions;
- Reviewing and advising on proposer comments on the RFP and draft project agreement;
- Assisting in developing the negotiating strategy and negotiating the final project agreement, appendices and related agreements and documents including financing agreements and technical and financial proposals;
- Attending in collaborative meetings at which commercial and financial matters relating to the procurement and project agreement are discussed;
- Advising regarding evaluation process and issues, and selection criteria;
- Leading financial evaluation process;
- Drafting appropriate reports on the procurement including selection presentations / memos, and reports;
- Participating in presentations and meetings concerning the procurement process and selection of the preferred bidder.

3. Selection of Bidder to Financial Close

- Identifying tasks required to financial close, including working with the preferred bidder's financial advisor to confirm requirements, and process for financial close;
- Reviewing closing documents;
- Addressing final amendments to the project agreement;
- Preparing for financial close, including developing a protocol, dry-runs, meetings with preferred bidder's financial advisor, etc.;
- Supporting financial close.

III. RFQ SCHEDULE

Deadline for Questions	September 15, 2021
Proposals Due	September 20, 2021
Consultant Selection & Contract	October 12, 2021 anticipated Council meeting
Project Kickoff	October 18, 2021

IV. POSSIBLE WORK SCHEDULE

The City of Pflugerville is mobilizing resources to support the proposed Civic Center project and are targeting a potential May 2022 General Obligation Bond Election to fund the City Hall portion of the project once the terms of a proposed P3 agreement are better defined. The schedule below represents a possible schedule to achieve the goal of calling a May bond election. The City will work with the selected P3 Financial and Transactional Advisor to create schedule to deliver a successful project.

Possible Project Schedule	Date
Complete Project affordability analysis	November 2021
Develop financing plan and cash flow analysis to include the proposed timing of contributions and City long-range budget forecast purposes	November 2021
Complete Project scoping and value engineering	December 2021
Finalize Draft Project Agreement	December 2021
Submit P3 Procurement Package to City Council	December 2021
Release RFP	December 2021
RFP Submissions Due	January 2022
Proposal evaluations and selection of preferred proposal	February 2022
Recommend preferred proposal to the City Council for Approval	February 2022
Call May 2022 Bond Election	February 2022
Finalize P3 Agreement with preferred bidder	March 2022
May 2022 Bond Election	May 2022
Validate and approve final design	October 2022
Commercial and financial Close	December 2022
Commences construction	January 2023

IV. SUBMISSION OF STATEMENTS OF QUALIFICATIONS

Interested and qualified firms or teams are invited to submit one (1) digital copy of materials that demonstrate their experience in providing P3 Financial and Transactional Advisor Services associated with a project of this scale and complexity. Provide a list of references from clients, funding agencies, governmental units or partners worked with (Exhibit B). The SOQ shall be submitted by a lead firm but may contain services from subconsultants. **Proposals may not exceed a total of 30 pages (single-sided), inclusive of all exhibits, attachments or other information.**

V. EVALUATION PROCEDURE & CRITERIA

An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the City Council based on the highest scoring Proposal. The City Council reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP. Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process.

Evaluation Criteria

Category	Category Points available:
Experience of Key Personnel	0-30
Firm's Comparable Experience	0-30
Scope of Work	0-40
Total Available Points	0-100

Submittals shall be delivered to:

Mr. Trey Fletcher, Deputy City Manager
 City of Pflugerville
citymanager@pflugervilletx.gov

All submittals must be received no later than 4 p.m.. Monday, September 20, 2021.

VI. ADDITIONAL MATERIALS

Any information or material provided beyond that requested in this RFQ may not be considered by the City.

VI. RESERVATION OF RIGHTS

In connection with the RFQ, the City of Pflugerville reserves all rights (which rights may be exercised by the City in its sole discretion) available to it under applicable laws, including without limitation, and with or without cause and with or without notice, the right to:

1. Cancel this RFQ, in whole or in part at any time before the execution of a contract by the City, without incurring any cost, obligations or liabilities.
2. Issue addenda, supplements, and modifications to this RFQ.
3. Revise and modify, at any time before the RFQ submittal due date, the factors and/or weights of factors the City will consider in evaluating RFQ submittals and to otherwise revise or expand its evaluation methodology as set forth herein.
4. Extend the RFQ submittal due date.
5. Investigate the qualifications of any firm under consideration and require confirmation of information furnished by a firm.
6. Require additional information from a firm concerning contents of its RFQ submittal and/or require additional evidence of qualifications.

7. Waive irregularities or permit corrections to data submitted with any response to this RFQ until such time as the City declares, in writing, that a particular stage or phase of its review of the responses has been completed or closed.
8. Reject at any time, any or all submittals, responses and RFQ submittals received.
9. Terminate, at any time, evaluations of responses received.
10. Appoint an evaluation committee to review RFQ submittals or responses, make recommendations and seek the assistance of outside technical experts and consultants in RFQ submittal evaluation.
11. Hold interviews and conduct discussions and correspondence with one or more of the firms responding to this RFQ to seek an improved understanding and evaluation of the responses to this RFQ.
12. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ.
13. Disclose information contained in an RFQ submittal to the public as required under the Texas Public Information Act.
14. Authorize firms to substitute key personnel until the City declares, in writing, that a particular stage or phase of its review has been completed and closed.
15. Waive deficiencies in an RFQ submittal, accept and review a non-conforming RFQ submittal or seek clarifications or supplements to an RFQ submittal.
17. Exercise any other right reserved or afforded to the City of Pflugerville under this RFQ or applicable law. The City reserves the right to modify the process, in its sole discretion, to address applicable law and/or the best interest of the City.

The City shall not, under any circumstances, be bound by or be liable for any obligations with respect to the project until such time (if at all) a contract has been awarded and all approvals obtained in form and substance satisfactory to the City have been executed and authorized by the City, and then only to the extent of such agreements.



**EXHIBIT A: PROFESSIONAL SERVICES
CONSULTANT SELECTION EVALUATION
CRITERIA**

The following is a description of items to receive consideration in the evaluation of responses for providing P3 Financial and Transactional Advisor Services to the City of Pflugerville. Following each description are the evaluation points associated with the item. TOTAL POSSIBLE POINTS EQUALS 100. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring. Wherever used, "prime firm" denotes a single firm or a joint venture responding as the prime consultant. Wherever used, "page" refers to single-sided, single spaced, 11-point minimum font printed 8-1/2 x 11-inch pages. The prime firm shall perform the largest share of the assignment (on an estimated percentage of total agreement basis). Responses failing to show the prime firm performing the plurality of the services shall be rejected as non-responsive. **Limitations on volume of requested information apply equally to single firms and joint ventures regardless of the number of firms partnering in the joint venture. Responses with excess volume or which do not include information for the evaluation of all consideration items may not be thoroughly reviewed or may be rejected as non-responsive.**

Consideration Item 1: <u>Experience of Key Personnel</u>
Provide experience, location, availability and credentials of key individuals that would be assigned to this project. Include experience of individuals on projects similar to the proposed project described in this solicitation. Prime firm and any subconsultants must have adequate and experienced current staff (including professionals registered in applicable fields, other professionals, and technicians) to competently and efficiently perform the work. Only one individual per job responsibility should be designated. List no more than five (5) projects meeting these criteria which have been completed in the past five (5) years for each individual.
30 Points

Consideration Item 2: <u>Firm's Comparable Experience (past 5 years)</u>
City is interested in the prime firm's history and success of providing similar services to public entities of similar size and with projects of similar size and budgets. List no more than five projects meeting these criteria which have been completed in the past five years. Provide contact information for each listed client and project. In addition, City may consider history of firm in complying with project programs, schedules, and budgets on previous City projects. List firms ability to meet the requirements in this RFQ including scope and schedule. Provide a description of what distinguishes firm from other firms performing a similar service.
30 Points

Consideration Item 3: <u>Scope of Work</u>
Describe how the Financial and Transaction Advisor intends to manage and complete their assigned tasks of the project, including internal, sub-consultant, subcontractor and owner performance. Provide recent (completed within the past five years) examples of the management of similar projects which required similar management organization, skills and expertise, to that required by this project. Identify those persons within the Financial and Transaction Advisor's organization that held responsible positions on each example project cited and explain. Provide owner references for each project cited.
40 Points

REFERENCES

Please list three (3) references of current or recent past customers who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this RFQ.

THIS FORM MUST BE RETURNED WITH YOUR RFQ

REFERENCE ONE

Government/Company Name _

Address _

Contact Person and Title _

Phone

Email Address _

Contract Period

Scope of Work _

REFERENCE TWO

Government/Company Name _

Address _

Contact Person and Title _

Phone

Email Address _

Contract Period

Scope of Work _

REFERENCE THREE

Government/Company Name _

Address _

Contact Person and Title _

Phone

Email Address _

Contract Period

Scope of Work _

**PROFESSIONAL SERVICES AGREEMENT
FOR
<PROJECT NAME>**

Exhibit C

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and [REDACTED] (“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.

“City Manager” shall mean the City Manager and/or their designee.

II. TERM

2.1 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.

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 [REDACTED] 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 City Manager. The determination made by City Manager 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 City Manager. 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 City Manager; 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 City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed [REDACTED] (\$00.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

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 City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. 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 Pflugerville
Attn: Trey Fletcher
Deputy City Manager
P.O. Box 589
Pflugerville, Texas 78691

If intended for Consultant, to:

Name, Address

IX. INSURANCE

91 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 "*Project Name*" 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.

92 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.

93 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 Pflugerville

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Pflugerville 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 Pflugerville.

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: General Premises/Operations Products/ Completed Operations Independent Contractors Personal Injury Contractual Liability	1,000,000 per occurrence, 2,000,000 general aggregate Or 2,000,000 combined single coverage limit	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage City to be provided a waiver of subrogation City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
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

SAMPLE

Professional Liability 1,000,000

Questions regarding this insurance should be directed to the City of Pflugerville (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.

94 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 Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

95 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 Pflugerville 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.

96 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.

97 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.

98 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.

99 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 Pflugerville 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.

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

X. INDEMNIFICATION

101 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.

102 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.

103 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.

104 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).

105 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.

106 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: [REDACTED] 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 ventures 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 acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, 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. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 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 Pflugerville, 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

191 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 TRAVIS COUNTY, TEXAS.

192 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 Travis 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. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, 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 Pflugerville, 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 Pflugerville 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 2271) 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
PFLUGERVILLE**

CONSULTANT

<i>(Signature)</i>	<i>(Signature)</i>
Printed Name: <u>Sereniah Breland</u>	Printed Name: _
Title: <u>City Manager</u>	Title: _
Date:	Date: _

APPROVED AS TO FORM:

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

Exhibit D: Conceptual Project Layouts

Exhibits by PGAL – July/ August 2021



- RESIDENTIAL
- RETAIL
- HOTEL
- OFFICE
- REC CENTER
- CITY HALL



