

THE STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

Consulting Services Contract

THIS CONTRACT is entered into on this 16th day of November 2021, by and between the **CITY OF FORNEY, TEXAS**, a municipal corporation located in Kaufman County, Texas (hereinafter referred to as "CITY"), acting by and through its City Manager or his designee, and **THE BOWMAN GROUP.**, of Arlington, Texas, (hereinafter referred to as "CONSULTANT").

WITNESSETH:

WHEREAS, CITY desires to obtain executive recruitment consulting services in connection with the recruitment of a **Chief of Police** for CITY (hereinafter referred to as "PROJECT"); and

WHEREAS, CONSULTANT is qualified to provide such services and is willing to undertake such services for CITY in exchange for fees hereinafter specified; NOW, THEREFORE,

THAT IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.
Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of its profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional or national professional standards.

II.
Scope of Services

CONSULTANT shall perform such services as are necessary for the recruitment of a **Chief of Police** for City specifically including, but not necessarily limited to, the tasks enumerated more fully in **Attachment "A"** to this Contract, attached hereto and incorporated herein by reference and made a part hereof as if written word for word. However, in the event of any discrepancy or conflict in the language of Attachment "A"

and this Contract, the terms and conditions of this Contract shall be final and binding on the parties hereto.

III. **Compensation**

For and in consideration of the work performed hereunder, CITY agrees to compensate CONSULTANT in **three equal installments** during the course of the search, in accordance with **Attachment “B”**, attached hereto and incorporated herein by reference and made a part hereof as if written word for word. However, in the event of any discrepancy or conflict in the language of **Attachment “B”** and this Contract, the terms and conditions of this Contract shall be final and binding on the parties hereto. The initial installment is billed upon **execution by both parties of the professional service agreement and completion of the initial Scope of Work item by CONSULTANT**. The second installment is billed upon **selection of the initial pool of candidates for consideration**. The final installment is billed after the **presentation of the top candidates** is completed. Expenses (reimbursable) items and supplemental services will be billed with each of the three installments, as appropriate. When billing, CONSULTANT will submit to CITY an invoice for services performed and reimbursable expenses incurred by CONSULTANT. Terms of each invoice shall be net thirty (30) days. Each invoice shall show the percentage of work completed on each phase of the Project, a brief summary of the work performed, and the total of the invoice amount as well as running total balance.

CITY agrees to pay to CONSULTANT for satisfactory completion of all services included in this Contract a total fee not to exceed **FORTY-TWO THOUSAND SEVEN HUNDRED DOLLARS (\$42,700) (plus not-to-exceed expenses)**. The cost estimate for accomplishing the specified Scope of Services is included in the Proposal. In the cases where additional tasks are requested, CONSULTANT will not initiate work until authorized by CITY in writing to proceed.

The Scope of Services shall be strictly limited. CITY shall not be required to pay any amount in excess of the original proposed amount unless CITY shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts. If at any time it becomes evident that the cost estimates provided to CITY will not be sufficient to complete the authorized work, CONSULTANT will immediately notify CITY in writing of said fact.

IV. **Term**

The term of this agreement shall commence on the date first written above and shall terminate when the services are completed unless the Contract is terminated earlier in accordance with its terms.

V.
Termination

CITY may terminate this Contract upon written notice to CONSULTANT. Upon receipt of termination notice, CONSULTANT shall stop all work in progress, including subcontracts. All finished or unfinished documents, data, studies, surveys, reports, photographs, etc. prepared by CONSULTANT and all subcontractors will be delivered to CITY and shall become the property of CITY upon final payment to CONSULTANT. CITY shall pay CONSULTANT for all work performed in accordance with the provisions of this Contract prior to the date of termination. CONSULTANT shall invoice CITY for all work performed within thirty (30) days of termination notice. CITY shall not be responsible for payment of any invoices received after the expiration of thirty (30) days from notice of termination.

VI.
Ownership of Documents

All documents, reports, and specifications prepared or assembled by CONSULTANT under this Contract shall become the sole property of CITY and shall be delivered to CITY, without restriction on future use. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. Copies may be used for promotional purposes. This contract and the proposal contains proprietary business sensitive information and shall not be released without the consent of the CONSULTANT.

VII.
Insurance

A. The Consultant shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. Consultant shall not commence work under this Contract until Consultant has obtained all the insurance required under this Contract and such insurance has been approved by the City.

1. Professional Liability Insurance: Consultant shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be \$1,000,000.00 per claim and aggregate. Consultant shall maintain this policy for a period of four (4) years after the completion of the project or shall purchase extended reporting period or "tail" coverage.

B. Each insurance policy to be furnished by Consultant shall include the following conditions by endorsement to the policy:

1. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail to:

Risk Manager
City of Forney
P.O. Box 826
101 E. Main St.
Forney, TX 75126

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to City is required.

Consultant shall also notify CITY within thirty (30) days after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

2. The term "Owner" or "City" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of CITY and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of City;

3. All provisions of the Contract concerning liability, duty and standards of care shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by Consultant, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Consultant. The City's decision(s) thereon shall be final;

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas.

D. Consultant agrees to the following:

1. Companies issuing the insurance policies and Consultant shall have no recourse against City for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Consultant;

2. Approval, disapproval or failure to act by City regarding any insurance supplied by Consultant (or any subcontractors) shall not relieve

Consultant of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Consultant from liability; and,

3. No special payments shall be made for any insurance that the Consultant and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

VIII.

Right to Inspect Records

Consultant agrees that City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions relating to this Contract. Consultant agrees that City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. City shall give Consultant reasonable advance notice of intended audits.

IX.

Indemnity

CONSULTANT undertakes and agrees to defend, indemnify and hold harmless CITY and any and all of their Boards, commissions, officers, agents, representatives, employees, volunteers and elected or appointed officials from and against any and all suits and causes of action, claims, charges, costs, damages, demands, expenses (including, but not limited to, Attorney's fees and cost of litigation), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including CONSULTANT's employees and agents or damage or destruction to any property of either party hereto or third persons in any manner arising by reason of or incident in the performance of this Contract occasioned by any error, omission or negligent act on the part of CONSULTANT or CONSULTANT's officers, agents, employees or subcontractors of any tier.

Consultant warrants that no music, literary or artistic work or other property protected by copyright will be reproduced or used, nor will the name of any entity protected by trademark be reproduced or used by Consultant unless Consultant has obtained written permission from the copyright or trademark holder as required by law, subject also to City's

consent. Consultant covenants to comply strictly with all laws respecting copyrights, royalties, and trademarks and warrants that it will not infringe any related statutory, common law or other right of any person or entity in performing this Contract. Consultant will indemnify and hold City and its officers, agents, and employees harmless from all claims, losses, and damages (including court costs and reasonable attorneys' fees) with respect to such copyright, royalty or trademark rights.

X.
Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of CITY in the performance of this Contract. No term or provision of or act of CONSULTANT or CITY under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, Contractors, subcontractors, and consultants, and that the doctrine of respondeat superior shall not apply between CITY and CONSULTANT, its officers, agents, employees, Contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

XI.
Default

CITY reserves the right to terminate this Contract immediately upon breach of any term or provision of this Contract by CONSULTANT; or, if at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide SERVICES in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the SERVICES of other parties therefor. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy due to CONSULTANT's nonperformance under this Contract, the cost to CITY of the performance of the balance of the work is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse CITY for such excess, but in no event shall such excess exceed ten percent (10%) of the original Contract amount as set out in the Contract.

XII.
Changes

CITY may, from time to time, require changes in the scope of the SERVICES to be performed under this Contract. Such changes as are mutually agreed upon by and between CITY and CONSULTANT shall be incorporated by written modification to this Contract.

XIII.
Conflict of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the SERVICES called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

XIV.
Mailing Address

All notices and communications under this Contract to be mailed or delivered to CITY shall be sent to the address of CITY's agent as follows, unless and until CONSULTANT is otherwise notified:

City of Forney
P.O. Box 826
101 E. Main St.
Forney, TX 75126
Attention: Charles Daniels, Interim City Manager

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until CITY is otherwise notified:

The Bowman Group
2921 Collard Road
Arlington, Texas 76017
Attention: Theron L. Bowman, Ph.D.

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted by the sending party.

XV.
Successors and Assigns

CITY and CONSULTANT each binds himself and his successors, executors, administrator and assigns to the other party of this Contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XVI.
Applicable Law

This Contract is entered into subject to the Charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and Federal laws. CONSULTANT will make any and all reports required per Federal, State or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income. Situs of this Contract is agreed to be Kaufman County, Texas, for all purposes including performance and execution.

XVII.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are held for any reason to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XVIII.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XIX.
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating

to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties.

XX.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXI.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXII.
Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Forney, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Kaufman County, Texas.

XXIII.
Equal Employment Opportunity

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship.

XXIV.
Israel Provision

Pursuant to Chapter 2270 of the Texas Government Code, the Consultant verifies by signing this Contract that the Consultant does not boycott Israel and will not boycott Israel during the term of this Contract.

THE BOWMAN GROUP.

BY _____
Printed/Typed Title

Printed/Typed Title

Tax Identification No.

CITY OF FORNEY, TEXAS

Charles Daniels, Interim City Manager

ATTEST

Dorothy Brooks
City Secretary

APPROVED AS TO FORM:
City Attorney

Jon Thatcher

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CONSULTANT Acknowledgement

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of _____, a corporation of _____ County, Texas, and as _____ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public In and For
The State of Texas

Notary's Printed Name

My Commission Expires: _____

THE STATE OF TEXAS §
§
COUNTY OF KAUFMAN §

City Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Charles Daniels, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF FORNEY, TEXAS**, a municipal corporation of the State of Texas, Kaufman County, Texas, and as the Interim City Manager thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public In and For
The State of Texas

Notary's Printed Name

My Commission Expires: _____