

PART ONE: CONTRACT REVIEW AND ADMINISTRATION CHECKLIST

Department: _____ (Department Liaison and Contact Information)

Legal Name and Contact Information for Third-Party: (include entity incorporation; principal place of business; address, phone number, email, signature authority and title)

T2 Professional Consulting

Contract Description: Professional Services - City Manager

Contract Term: _____ (include expiration date; renewal terms, completion if applicable) (if applicable) Budgeted and Appropriated?

Consideration: _____

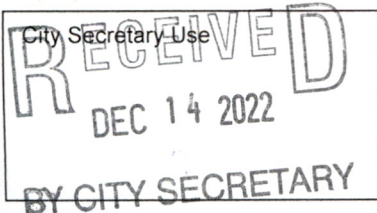
Reporting Requirements: _____ (any monthly, quarterly, yearly reporting; specific agency reports)

Other requirements and/or information (emergency request): _____ (i.e. guarantee, letter of credit, fees, payment and performance bonds, exhibits)

PART TWO: SUBMITTING CONTRACT FOR EXECUTION BY CITY

- | Initial | Date | |
|------------|---------------------|---|
| _____ | / _____ | <u>DIRECTOR</u> : Attach one (1) Original Contract signed and notarized by Third-Party. |
| _____ | / _____ | <u>DIRECTOR</u> : Attach receipt for required fees, other documentation required, and copies of Insurance Certificate and Endorsement/Rider (i.e., endorsements for commercial general liability, automobile liability, workers compensation, if applicable). |
| _____ | / _____ | <u>RISK MANAGEMENT</u> : Provide interpretation and direction regarding all certificates of insurance policies, endorsements, and riders, if applicable. |
| _____ | / _____ | <u>FINANCE</u> : Verify that Funds are budgeted and appropriated, if applicable. Account No. _____. |
| _____ | / _____ | <u>DIRECTOR</u> : If Council approval required, approval obtained on <u>Dec. 13</u> , 20 <u>22</u> by Resolution No. 20(____)R-____. MOTION <u>X</u> NA _____. |
| <u>OCS</u> | / <u>12/16/2022</u> | <u>LEGAL</u> : Contract is in legal form and ready for execution by City Manager/Dep't Director. |

**** Note: If any of the required information or documentation is incomplete or missing, the contract and attached exhibits/documents will be returned to the Department Liaison listed above, which may delay routing and finalization.** Please refer to Administrative Policy 92-03E, Contract Administration should questions arise regarding preparation and routing.



Director Signature _____

Date _____

STATE OF TEXAS §
 §
COUNTY OF ECTOR §

**PROFESSIONAL SERVICES AGREEMENT
FOR THE
CITY OF ODESSA, TEXAS**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the City of Odessa, a Texas municipal corporation, with its principal office at 411 West 8th Street, Odessa, Ector County, Texas (hereinafter referred to as “City”), and T2 Professional Consulting, LLC, a Texas Limited Liability Company whose principal office is at 505 West 15th Street, Austin, Texas 78701, (hereinafter referred to as “Professional”). City and Professional are each a “Party” and are collectively referred to herein as the “Parties”.

**ARTICLE I
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Professional shall provide professional services to the City, as described in Attachment “A”.

**ARTICLE II
TERM AND TERMINATION**

2.1 **Term.** The term of this Agreement shall begin on the last date of execution of the Agreement. Professional understands and agrees that time is of the essence. All services, organizational analysis, transition management, recruitment, written reports, and other data are to be completed and delivered to City as shown on Attachment “A”.

2.2 **Termination.**

.1 City or Professional may cancel or terminate this Agreement upon thirty (30) days written notice to the other, with the provision and understanding that immediately upon receipt of notice of such cancellation from either Party to the other, all work and labor being performed under this Agreement shall immediately cease, pending final cancellation at the end of such thirty-day period, and further provided that Professional shall be compensated in accordance with the terms of this Agreement for all work accomplished prior to the receipt of notice of such termination.

.2 All completed or partially completed studies, reports, drawings, documents, and material prepared under this Agreement shall then be delivered to City which it, its agents, or contractors, may use without restraint for the purpose of completing the project.

.3 All rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination.

ARTICLE III
SCOPE OF SERVICES

3.1 Services.

.1 Professional's services hereunder shall include, but shall not be limited to, the services described in Attachment "A".

.2 Professional shall work under the direction of Mayor Javier Joven and the Odessa City Council or their designee (hereinafter referred to as "Council") and appropriate City officials and perform any and all related tasks required in order to fulfill the purposes of this Agreement.

.3 The services will be conducted on a step-by-step basis as authorized by Council. The services to be rendered by Professional may be limited or modified by Council. Council may authorize a phase to be completed and then terminate the agreement by not authorizing any of the remaining phases.

.4 Professional shall deliver all applicable data, reports, and documents that result from its performance of this Agreement to Council in such form as is satisfactory to Council.

.5 Council or its designee shall be invited to all development and progress meetings involving Professional and shall be provided an agenda of the items to be discussed at the time of such invitation.

.6 Modifications shall not occur unless agreed to by the Parties.

3.2 Performance of Services.

.1 Professional, and its employees or associates, jointly shall perform all the services under this Agreement in a manner consistent with the degree of professional skill and care and the orderly progress of the work ordinarily exercised by members of the same profession currently practicing under similar circumstances. Professional represents that all its employees who perform services under this Agreement shall be qualified and competent to perform the services described in Attachment "A". In the event of a health crisis and/or a declaration of disaster by either local, state, or federal authority which causes the Professional to be unable to perform services as listed in Attachment "A" for the entire period contemplated by this Agreement, Professional and City agree that City will only compensate Professional for the duties performed as listed in Attachment "A" prior to the inability to perform.

.2 Professional shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by Professional under this Agreement, and City may look solely to Professional for performance of these services.

.3 Approval by City of drawings, designs, specifications, reports, and incidental work shall not in any way relieve Professional of responsibility for the technical accuracy, quality, and timely completion, of the work. City's review, approval, acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

3.3 **Revision of Documents.**

.1 City reserves the right to direct substantial revision of the documents after approving them, but in such event, City shall pay to Professional just and equitable compensation, determined by mutual agreement, for services rendered in making such revisions.

.2 If revisions are required by reason of Professional's negligent error or omission, then such revisions will be made by Professional without additional compensation.

3.4 **Ownership of Documents.**

.1 Upon acceptance or approval by City, all reports, information and other data, given to, prepared or assembled by Professional under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction except as herein provided.

.2 Professional may make copies of any and all documents for its files and shall have the rights to the concepts contained therein.

.3 It is understood that Professional does not intend or represent that such documents are suitable for reuse by City or others for any other project; however, City may reuse concepts or comments included in deliverables for any other City purpose at City's discretion and without any recourse back to Professional for any results or effects of such City reuse.

3.5 **Confidential Work.** No reports, information, project evaluation, project design, data or any other documentation developed by, given to, prepared by or assembled by Professional under this Agreement shall be disclosed or made available to any individual or organization by Professional without the express prior written approval of Council.

ARTICLE IV PAYMENT FOR SERVICES

4.1 **Fees.** In consideration of the services to be performed by Professional under the terms of this Agreement, City shall pay Professional for services actually performed, a monthly set fee, of Twenty-four thousand dollars and no cents (\$24,000.00) for an annual base professional fee of Two-hundred and eighty-eight thousand and not cents (\$288,000.00). Payment One (1), due at the time of the execution of this agreement shall be a fee of Fifty thousand dollars and no cents (\$50,000.00). All reimbursable expenses will be submitted to the City by Professional monthly with invoice.

.1 Professional's charges for its services shall also not exceed similar charges of Professional for comparable services to other customers.

.2 The amount shown on Attachment "A" shall include fees and all expenses to be incurred by Professional, including travel. Additional charges for fees or expenses shall not be made unless specifically indicated on Attachment "A".

4.2 **Payments.** Payments to Professional shall be in the amount shown by the invoices and other documentation submitted and shall be subject to Council's approval.

.1 *If applicable*, the billings shall be based on the hourly rate of key employees and itemized expenses actually incurred but not to exceed the maximum fee set forth in Attachment "A".

.2 All services shall be performed to the reasonable satisfaction of Council, and City shall not be liable for any payment for services that Council finds are not in compliance with this Agreement.

ARTICLE V

GENERAL TERMS AND CONDITIONS

The following general conditions shall apply to this Agreement and any amendments hereto.

5.1 **Entire Agreement.** This Agreement, including all attachments, exhibits, and addenda, embodies the complete agreement of the Parties hereto, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement. **In the event of conflicting provisions between this Agreement and the attachments, this Agreement shall be controlling.**

5.2 **Amendments/Modification to Agreement.** This Agreement, and any exhibits, attachments, or addendum, may be amended or modified only by a written instrument executed by all Parties. If there are any conflicts between the Amendment and a previous version, the terms of the Amendment will prevail.

5.3 **Independent Contractor.** In performing services under this Agreement, the relationship between City and Professional is that of an independent contractor, and City and Professional by the execution of this Agreement do not change the independent status of Professional. No term or provision of this Agreement or act of Professional in the performance of this Agreement shall be construed as making Professional, its employees or contractors, the agent, servant, or employee of City. This project is not a joint enterprise and no action by either Party to this Agreement shall cause this project to be considered a joint enterprise.

5.4 **Venue.** The obligations of the Parties to this Agreement are performable in the City of Odessa which is located primarily in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas.

5.5 **Applicable Laws; Governing Law.**

.1 This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and Federal laws.

.2 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

5.6 **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. There shall not be a higher duty or responsibility for any Party because they draft the Agreement.

5.7 **Representation.** Professional represents that no City officer, employee, or agent has been compensated in any way with respect to this Agreement and its consideration by City. In no event will Professional pay a fee to or in any other manner compensate any City officer, employee, or agent in connection with the approval of this Agreement. A breach under this Article shall result in automatic termination of this Agreement.

5.8 **Assignment.** Professional shall not assign this Agreement, in whole or in part, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

5.9 **No Third-Party Rights.** Nothing within this Agreement shall be deemed to waive, modify, or alter any legal or equitable defense available to any Party, nor to create any legal or equitable right or claim on behalf of any third party.

5.10 **Notices.** All notices, communications, and reports required or permitted under this Agreement shall be personally delivered, delivered by electronic means, or mailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for City, to:

City of Odessa
Attn.: Mayor Javier Joven
411 W. 8th Street
Odessa, Texas 79761
jovenformayor@gmail.com

If intended for Professional, to:

T2 Professional Consulting, LLC
Attn.: Michael D. Wilson
Managing Member
2500 Lotus Ave.
Fort Worth, Texas 76111
t2profcon@gmail.com

5.11 **Indemnity.** *Professional agrees to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought and suffered by any person or persons, that may arise out of or be occasioned by Professional's breach of any of the terms or provisions of this Agreement, or by any other negligent act or omission of Professional, its officers, agents, associates, employees or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this Paragraph shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both Professional and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to City under Texas law and without waiving any defense of the Parties under Texas law. The provisions of this Paragraph 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.*

5.12 **Insurance.**

.1 Professional shall maintain at all times during the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy placed with a company, authorized to do business in Texas, in an amount not less Two Million Dollars and 00/100 (\$2,000,000). Professional shall also provide adequate public liability insurance for bodily injury and property damage. Professional shall maintain workers' compensation coverage on all of Professional's employees working on this project.

.2 Certificates of all policies referred to herein, certified by agent or attorney-in-fact issuing them, together with written proof that premiums have been paid, shall be deposited by Professional with City prior to the beginning of the term of this Agreement. Failure on part of Professional to furnish a certificate before the expiration date for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, will constitute a default on Professional's part, entitling City, at its option, to terminate its duties and Professional's rights under this Agreement. **Professional shall require the giving of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any such policies, evidenced by return receipt of United States Certified Mail.**

.3 Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against City, its officers, agents, or employees regardless of the cause or origin of the claim or right including the negligence of City, its agents, officers, or employees, and that the issuer covenants that no insurer shall hold any right of subrogation against City.

.4 Each policy must also contain an endorsement naming City, its officers, agents, and employees as an "Additional Insured" as to all applicable coverage, with the exception of Professional Liability and Workers' Compensation Coverage.

.5 In lieu of providing the aforementioned insurance, Professional may obtain the services of another individual or company meeting said insurance requirements; provided that all services (as determined by Council) required under Attachment "A" are covered. Regardless of whether said insurance is provided by Professional or another, all other portions of 5.12 must be met. Each issuer shall be subject to approval by the Council of Risk Management to ensure that all services under Attachment "A" are covered.

5.13 **Force Majeure.** Neither Party shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God; acts of government agencies; strikes; labor disputes; fire; explosions or other casualties; vandalism; riots; acts of war or terrorism; declared pandemic, and any other cause not reasonably within the control of City or Consultant except as herein provided, and which by the exercise of due diligence City or Consultant is unable, wholly or in part, to prevent or overcome.

5.14 **Right of Review and Audit.** City may review any and all of the services performed by Professional under this Agreement. City is hereby granted the right to audit, at City's election, all of Professional's records and billings relating to the performance of this Agreement. Professional agrees to retain such records for a minimum of three (3) years following completion of this Agreement.

5.15 **Nondiscrimination.** As a condition of this Agreement, Professional covenants that Professional will take all necessary actions to insure that, in connection with any work under this Agreement, Professional, its associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, Professional shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from final Agreement completion, with full access allowed to authorized representatives of the City of Odessa, upon request, for purposes of evaluating compliance with this and other provisions of the Agreement.

{Signature Page to Follow}

EXECUTED this the 14th day of December, 2022, by City, signing by and through its Mayor, duly authorized to execute same and by Professional, acting through its duly authorized officials.

“CITY”
City of Odessa

By: Javier Joven
Javier Joven, Mayor

ATTEST:

Norma Aguilar-Grimaldo
Norma Aguilar-Grimaldo, City Secretary



“PROFESSIONAL”
T2 Professional Consulting, LLC

By: Michael D. Wilson
Michael D. Wilson
Managing Member

CITY OF ODESSA

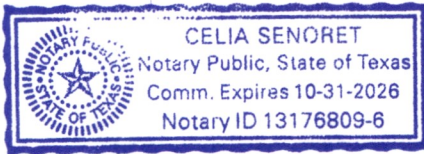
STATE OF TEXAS §

COUNTY OF ECTOR §

This instrument was acknowledged before me on the 14 day of DECEMBER, 2022, by Javier Joven, Mayor for the City of Odessa.

Celia Senoret

Notary Public in and for the State of Texas



PROFESSIONAL

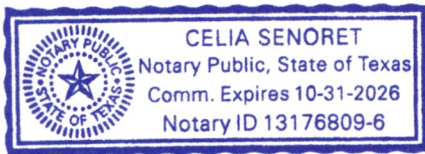
STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the 14 day of DECEMBER, 2022, by Michael D. Wilson, Managing Member of T2 Professional Consulting, LLC.

Celia Senoret

Notary Public in and for the State of Texas



Attachment "A"

I. Fee

CONTRACTOR agrees to perform the following services at a monthly set fee of \$24,000 for an annual base professional fee of \$288,000.00. Payment One (1), due at the time of the execution of this agreement, will be a fee of \$50,000.00. All reimbursable expenses will be submitted to the CITY by CONTRACTOR monthly with invoice.

II. Services

CONTRACTOR agrees to perform the following consulting services for the City Odessa:

1. CONTRACTOR will provide Professional Services that shall include, but is not limited to, the following:

- a. Advise and Consult for the selected Interim City Manager;**
- b. Organizational Analysis;**
- c. Conduct diagnostic meetings with City Leadership, internal stakeholders, and external stakeholders;**
- d. Create a Benchmark Committee to provide unique insight as to the key Accountabilities needed for the Interim City Manager and next City Manager, the process will be as follows:**
 - i. Select a team of Subject Matter Experts (or SMEs, 3-5 if possible).**
 - ii. Discussing most important aspects of the job: Why does the job exist?**
 - iii. Use the Key Accountabilities (KA) worksheet to narrow the list down to the top 4-5 accountabilities of the job. The KA worksheet helps eliminate bias.**
 - iv. Walk through the KA worksheet with all SMEs to gain agreement.**
 - v. Creating a Job Report (T2 Prof Con TM Job - JOB).**
 - vi. A Multi- Repondent Report, otherwise known as a Benchmark is created. This is created in IDS® as a Job Multiple Respondent report (JOBMR).**

e. Guide in public relations and internal/external engagement messaging and activities.

2. CONTRACTOR will provide training to City Leaders and key staff members under the following topics:

a. Leadership Transition Management;

b. Leadership Processes and Tools;

c. Recruitment and Selection; and

d. Group Development and Engagement;

3. CONTRACTOR shall serve as a liaison to vendors hired to complete specific tasks relating to organizational audits, recruitment initiatives, and any other services identified as a result of the organizational analysis.

4. CONTRACTOR shall provide CITY a monthly invoice required in Section 1 of the Agreement. These may be provided in one document; however, CITY may ask for additional detail in the event the report is determined inadequate, in CITY's sole discretion.