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Resolution No. 24-0517
ContractNo. PNV-2024-00024320

STATE OF TEXAS CITY SECRETARY
 DALLAS, TEXAS
COUNTY OF DALLAS § CONTRACT FOR PROFESSIONAL CONSULTING
 § SERVICES – PLANNING AND ZONING REVIEW

THIS CONTRACT FOR PROFESSIONAL CONSULTING SERVICES – PLANNING AND ZONING REVIEW (this “Contract”) is made and entered into by and between the CITY OF DALLAS, a Texas municipal corporation located in Dallas County, Texas (“City”), and FREESE AND NICHOLS, INC., a Texas corporation with its principal office located at 2711 Haskell Avenue, Suite 3300, Dallas, Texas 75204 (“Consultant”).

WITNESSETH

WHEREAS, effective March 15, 2023, authorized by Administrative Action No. 23-5540, the City entered into that certain Contract for Professional Consulting Services – Planning and Zoning Review (the “2023 Contract”) with Consultant to provide on-call professional urban planning and zoning services for City’s Department of Planning & Urban Design for a term of six months, in an amount not to exceed \$99,980.00; and

WHEREAS, effective July 17, 2023, authorized by Administrative Action 23-6064, the term of the 2023 Contract was extended an additional six months by Supplemental Agreement No. 1 to the 2023 Contract; and

WHEREAS the City Council recognized additional professional zoning review and planning services are needed to augment current planning and development issues impacting the City and authorized appropriations in fiscal years 2023-24 and 2024-25 for such services; and

WHEREAS, to prevent a significant disruption in operations related to zoning, conservation, and historic preservation applications once the 2023 Contract funds are depleted, a Special Need/Justification to contract with Consultant for continued on-call professional urban planning and zoning services was requested by the Department of Planning & Urban Design and approved by the City Manager; and

WHEREAS, the parties agreed on an updated scope of work for, and Consultant submitted an updated compensation schedule to continue providing, such services for the City;

NOW, THEREFORE, City and Consultant, in consideration of the terms, covenants, and conditions herein contained, agree as follows:

1. PURPOSE

The purpose of this Contract is to state the terms and conditions under which Consultant shall provide on-call professional urban planning and zoning services for City's Department of Planning & Urban Design (the "Services").

2. DESCRIPTION OF SERVICES

Consultant's Services hereunder shall include, but shall not be limited to, the following:

A. Consultant shall perform all the Services as set forth in, and the Services shall conform in every respect to: (i) City of Dallas Zoning Review and Planning Services – Scope of Services and Responsibilities of Owner (the "Specifications"), attached hereto as **Exhibit A**; and (ii) Consultant's compensation schedule and Terms and Conditions of Agreement, as modified (together, the "Proposal"), collectively attached hereto as **Exhibit B**, both of which Exhibits are incorporated by reference and made a part of this Contract for all purposes as though each were written word for word in this Contract; provided, however, should there be any conflict between the terms of the Specifications, the Proposal, and this Contract, the terms of this Contract shall be final and binding, and the Specifications shall control where they conflict with the Proposal.

B. Consultant shall work closely with the Director of City's Planning & Urban Design Department or such Director's designee (the "Director"), and other appropriate City officials as directed and shall perform any and all related tasks required by the Director in order to fulfill the purposes of this Contract.

C. Consultant shall deliver to the Director all reports, designs, and related documents, information, or other data which are required to be produced and given to City in performing Services under this Contract (hereinafter called "Deliverables") in the format required by the Director.

3. PERFORMANCE OF SERVICES

Consultant and its employees or associates shall perform all the Services under this Contract. Consultant represents that all its employees or associates who perform Services under this Contract shall be fully qualified and competent to perform the Services described in Section 2.

4. TERM

The initial term of this Contract shall commence on April 10, 2024, and terminate on April 9, 2026. City shall have three (3) one-year renewal options, exercisable at City's sole discretion. Consultant understands and agrees that time is of the essence. All Deliverables are to be completed and delivered to City by the termination date, or by the milestone or completion date or dates provided in a performance schedule agreed upon between Consultant and the Director, unless an extension of time, based upon good reasons presented by Consultant, is approved by the Director.

5. PAYMENT FOR SERVICES

In consideration of the Services to be performed by Consultant under the terms of this Contract, City shall pay Consultant for Services actually performed a fee not to exceed **SEVEN HUNDRED TWENTY-TWO THOUSAND TWO HUNDRED FIFTY-FIVE AND 00/100 DOLLARS (\$722,255.00)**, subject to appropriation. If other conditions necessitate additional Services or a change in Services as provided in Section 6, any increase in compensation must be authorized and funded in advance by resolution of the City Council or, where applicable, by duly authorized administrative action signed by the City Manager and approved as to form by the City Attorney. Consultant's charges for its Services are not to exceed similar charges of Consultant for comparable Services to other customers. Payments to Consultant shall be in the amount shown by the billings and other documentation submitted and shall be subject to the Director's approval. All Services shall be performed to the satisfaction of the Director and City shall not be liable for any payment under this Contract for Services which are unsatisfactory and which have not been approved by the Director. The final payment due under this Contract will not be paid until the required Deliverables have been received in the required format and approved by the Director. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Consultant, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

6. CHANGE IN SERVICES

City, acting through its Director, may request from time to time changes in the scope or focus of the activities, investigations and studies conducted or to be conducted by Consultant pursuant to this Contract. Any change in the scope or focus which varies significantly from the scope of Services set out in Section 2 and would entail a significant increase in cost or expense to Consultant shall be mutually agreed upon by Consultant and the Director. Changes in the scope which in the opinion of Consultant and the Director would justify an increase in compensation requiring additional funding by City must first be authorized as described in Section 5.

7. CONFIDENTIAL WORK

No Deliverables or other information (including information given by City to Consultant to assist Consultant's performance under this Contract) developed by, given to, prepared by or assembled by Consultant under this Contract shall be disclosed or made available to any third-party individual or organization by Consultant without the express prior written approval of the Director.

8. OWNERSHIP OF DOCUMENTS

Upon acceptance or approval by City, all Deliverables prepared or assembled by Consultant under this Contract, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction on future use. Consultant may make copies of any and all Deliverables and related documents or items for its files. By execution

of this Contract and in consideration of the fee for Services to be paid under the Contract, Consultant hereby conveys, transfers and assigns to City all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the project designs and other project data developed under this Contract.

9. CONSULTANT'S LIABILITY

Approval of City shall not constitute or be deemed a release of the responsibility and liability of Consultant, its employees, agents, associates, or subconsultants for the accuracy and competency of the Deliverables prepared by Consultant, its employees, agents, associates, or subconsultants, as required under this Contract. In addition, approval of City shall not be deemed to be the assumption of any responsibility by City for any defect, error, or omission in the Deliverables prepared by Consultant, its employees, agents, associates, or subconsultants.

10. COMPLIANCE WITH LAWS AND REGULATIONS

A. The City has developed an Environmental Management System (EMS), based upon International Standards Organization (ISO) Standard 14001. As part of the EMS, the City has adopted an environmental policy. Consultant acknowledges receipt of the environmental policy and shall adhere to the policy and provide information to the City in the form and at the times requested by the City in furtherance of the policy. Consultant also acknowledges that it has received and read the City's Contractor Environmental Packet and Contractor Policy. Consultant understands that the Contractor Environmental Packet and Contractor Policy are not intended to be all-inclusive, but rather a guideline for environmental responsibility. The Contractor Environmental Packet, Contractor Policy, and the City's Environmental Policy are available at the following link: <https://dallascityhall.com/departments/OEQ/Pages/contractors.aspx>.

B. This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Dallas, as amended, and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Consultant shall, during performance of this Contract, comply with all applicable City codes and ordinances, as amended and all applicable State and Federal laws, rules and regulations, as amended.

11. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Consultant is expected to fully comply with the requirements of this ordinance in the event of a claim, in addition to all other requirements in this Contract related to claims and notice of claims.

12. 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 the Services under this Contract. Consultant shall exercise independent judgment in performing Services under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the workflow and determining how the work is to be performed. No term or provision of this Contract or act of Consultant in the performance of this Contract shall be construed as making Consultant the agent, servant or employee of City, or making Consultant or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

13. INDEMNITY

CONSULTANT 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, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF CONSULTANT AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONSULTANT WILL DEFEND CITY AGAINST A CLAIM THAT ANY SOURCE FILES, INTELLECTUAL PROPERTY, WORK PRODUCT, AND/OR DELIVERABLES SUPPLIED HEREUNDER INFRINGES A U.S. PATENT OR COPYRIGHT AND VENDOR WILL PAY RESULTING COSTS, DAMAGES AND ATTORNEY'S FEES FINALLY AWARDED, PROVIDED THAT CITY PROMPTLY NOTIFIES THAT CONSULTANT IN WRITING OF THE CLAIM.

IF CONSULTANT DEFENDS CITY AGAINST SUCH CLAIMS, THE CITY ATTORNEY OF THE CITY SHALL BE KEPT INFORMED OF SETTLEMENT NEGOTIATIONS AND SHALL EXECUTE ANY SETTLEMENT AGREEMENT REACHED BY CONSULTANT ON CITY'S BEHALF.

THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTS OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONSULTANT AND CITY ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS SECTION 13 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE TERM OF THIS CONTRACT.

14. INSURANCE REQUIREMENTS

A. Consultant shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to City, the minimum insurance coverage contained in **Exhibit C**, attached to and made a part of this Contract.

B. Approval, disapproval or failure to act by City regarding any insurance supplied by Consultant or its subconsultants shall not relieve Consultant of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Consultant's insurer or any denial of liability by Consultant's insurer shall not exonerate Consultant from the liability or responsibility of Consultant set forth in this Contract.

15. CONFLICT OF INTEREST

A. Consultant and its employees, agents or associates are required to make regular, timely, continual and full disclosures to the Director of all significant outside interests and responsibilities that may give rise to a direct or indirect conflict of interest, including, but not limited to, any and all significant outside interests and responsibilities that could reasonably be expected to impair independence of judgment in Consultant's performance of all of the Services under this Contract. Such disclosures must be made no later than ten (10) days following the event giving rise to the potential or actual conflict of interest for the duration of the Contract term. A potential or actual conflict of interest exists when commitments and obligations to the City or widely recognized professional norms are likely to be compromised in Consultant's performance of its duties under this Contract by the existence of Consultant's other professional relationships, contracts, obligations, or commitments. Failure to disclose such a conflict of interest may result in the City's immediate termination of this Contract by the City Manager.

B. The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or Services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city Services or benefits if the city Services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code.”

16. GIFT TO PUBLIC SERVANT

City may terminate this Contract immediately if Consultant has offered or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Consultant to remove any employee of Consultant from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

17. ASSIGNMENT

This Contract provides for unique professional Services. Consultant, therefore, shall not sell, assign, transfer or convey its interest or rights in the Contract, or any claim or cause of action related thereto, in whole or in part, without the prior written consent of the City Manager.

18. TERMINATION

City’s Director may, at its option and without prejudice to any other remedy City may be entitled to at law, in equity or elsewhere under this Contract, terminate further work under this Contract in whole or in part for failure to appropriate funds, cause or for the convenience of City by giving at least ten (10) days advance written notice of termination to Consultant, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. City also has the right to request that Consultant assign and transfer to City all of Consultant’s rights and obligations under existing subcontracts it has to perform Contract work in the event of termination under this Section. City shall compensate Consultant in accordance with the terms of this Contract for Contract work properly performed prior to the date of termination specified in the notice, following inspection and acceptance of same by City's Director. Consultant shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate.

19. NOTICES

Except as otherwise provided in Section 11, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

Director
City of Dallas
Department of Planning & Urban Design
1500 Marilla Street, Room 1FN
Dallas, Texas 75201

If intended for Consultant, to:

Wendy Shabay Bonneau
Freese and Nichols, Inc.
2711 Haskell Avenue, Suite 3300
Dallas, Texas 75204

20. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

A. Consultant shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. 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, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. 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. Consultant shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Consultant agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

B. Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

C. Consultant shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate its payrolls and personnel records which pertain to current contracts with City for purposes of ascertaining compliance with this equal employment opportunity clause.

D. Consultant shall file compliance reports with City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of Consultant, and must be in the form that the City Manager or his designee prescribes.

E. If Consultant fails to comply with the equal employment opportunity provisions of this Contract, it is agreed that City at its option may do either or both of the following:

- (1) Cancel, terminate or suspend this Contract in whole or in part;
- (2) Declare Consultant ineligible for further City contracts until it is determined to be in compliance.

21. RIGHT OF REVIEW AND AUDIT

City may review any and all of the Services performed by Consultant under this Contract. City is granted the right to audit, at City's election, all of Consultant's records and billings relating

to the performance of this Contract. Consultant agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

22. VENUE

The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

23. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

24. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

25. COUNTERPARTS

This Contract may be executed, including electronically, in one or more counterparts, each of which when so executed shall be deemed to be an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

26. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

27. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties and their respective administrators, successors and, except as otherwise provided in this Contract, their assigns.

28. MISCELLANEOUS

A. Where applicable by law, pursuant to Section 2271.002, Texas Government Code, the Consultant hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the Agreement. As used in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2271.001, Texas Government Code.

B. The Consultant hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or Services to a foreign terrorist organization. As used in the immediately preceding sentence, “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code.

C. Where applicable by law, pursuant to Section 2274.002, Texas Government Code, the Consultant hereby represents that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. As used in the immediately preceding sentence, “firearm entity” and “firearm trade association” shall have the meanings given such terms in Section 2274.001, Texas Government Code.

D. Where applicable by law, pursuant to Section 2274.002, Texas Government Code, the Consultant hereby represents that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of the contract. As used in the preceding sentence, “boycott energy company” shall have the meanings given such terms in Section 2276.001, Texas Government Code.

29. CERTIFICATION OF EXECUTION

The person or persons signing and executing this Contract on behalf of Consultant, or representing themselves as signing and executing this Contract on behalf of Consultant, do hereby warrant and certify that he, she or they have been duly authorized by Consultant to execute this Contract on behalf of Consultant and to validly and legally bind Consultant to all terms, performances and provisions herein set forth.

30. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

EXECUTED as of this, the 10th day of April, 2024, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 24-0517, adopted by the City Council on April 10, 2024, and by Consultant, acting through its duly authorized official.

APPROVED AS TO FORM:
TAMMY L. PALOMINO
City Attorney

CITY OF DALLAS
T. C. BROADNAX
City Manager

BY Ashley Stockton Apr 16, 2024
Ashley Stockton (Apr 16, 2024 14:30 CDT)
Assistant City Attorney AS
AS

BY [Signature] Apr 16, 2024
Majed Ghafry (Apr 16, 2024 14:22 CDT)
Assistant City Manager

CONSULTANT:
FREESE AND NICHOLS, INC.,
a Texas corporation

BY Wendy Bonneau
Wendy Bonneau (Apr 5, 2024 15:34 CDT)

PRINTED
NAME Wendy Bonneau

TITLE Principal

240517

EXHIBIT A

**CITY OF DALLAS
ZONING REVIEW AND PLANNING SERVICES**

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

ARTICLE I | PROJECT UNDERSTANDING

The City of Dallas (CITY) is requesting proposals to provide professional urban planning and zoning services in an on-call capacity to assist with backlogs and continuity of service for cases involving zoning and current planning, preservation, and long-range planning. The consultant will provide to the CITY professional services including the review and analysis of planning and zoning cases in consultation with CITY staff, analysis of potential zoning options for conservation district applications, and serve on behalf of the CITY or as a representative of the CITY at community meetings, public hearings, or other formal CITY business, as requested by the CITY.

As services will be conducted for the CITY on an “as needed” basis, consultant will provide such services on an hourly fee structure. It is acknowledged that the CITY is in need of periodic zoning and current planning consulting services as described below under “Zoning and Current Planning services”, including attendance to present at meetings with CITY staff and with other entities as the CITY directs. All services provided to the CITY will be billed on an hourly basis.

Services will be requested on an as-needed and as-requested basis to review a wide variety of zoning change applications and related initiatives which include site visits, research, providing information on the application to the public. Provide professional review comments and recommendations to applicants and city staff pursuant to these reviews. As the CITY requests for each project, provide a professional planning review of the documents based upon the CITY’s plan, ordinances, and codes supplied for such review.

ARTICLE II | SCOPE

Zoning Applications and Current Planning:

The consultant shall render the following professional services, if requested by the CITY and on an as-needed basis, in connection with the review of CITY zoning/current planning activities, including but not limited to Planned Development Districts, General Zoning Changes, conservation/preservation application review, Authorized Hearings support services, Specific Use Permits, and Deed Restrictions. These services will be based on a proposed hourly rate and will follow department’s policies, processes, and schedule.

- A. As assigned by the CITY Planning Manager and/or Chief Planner, consultant will provide professional planning and zoning reviews per the CITY’s approved planning and zoning review process, the conservation/preservation application review process, authorized hearings process and as outlined in general terms below:
- B. Prepares reports, studies, and documents related to development standards for applications and amendments based on the City’s development code.
- C. Interacts and communicates with developers, consultants, property owners, residents, and the general public regarding assigned tasks.

- D. Provides technical review and analysis of private and public development proposals, identifies issues or potential problems and presents alternative solutions; conducts site inspections of proposed developments.
- E. Authors and revises development standards present new and revised standards to the City Plan Commission and its subcommittees, as applicable.
- F. Negotiates with applicants and/or the community and stakeholders at large to achieve desired development standards, as applicable.
- G. Make clear and concise presentations during community meetings, including City Plan Commission.
- H. Provide tactful and appropriate responses to inquiries from the public, other departments, or agencies.
- I. Establish and maintain cooperative-working relationships with those contacted in the course of work.
- J. Plan, recommend, develop, and implement public policies and procedures related to urban planning and zoning. Must possess a current and valid Texas driver's license.
- K. Review of applications or special projects for general compliance with the CITY's development codes, ordinances and master plans. Review comments shall be sent to the CITY's client/applicant via e-mail according to the specific application schedule following department's policies, processes, and schedules.
- L. Other planning and zoning consultation tasks, as requested by the CITY.
- M. All work and correspondence with the applicant must be reviewed and approved by the CITY's Planning Manager and/or Chief Planner. All tasks and deadlines shall follow normal department policies and schedules, under the guidance of the CITY's Planning Manager and/or Chief Planner.
 - 1. Offer to the CITY suggestions on potential impacts governed by other CITY departments and regulatory agencies, as may be noticed during review of applications. Offer recommendations on input from these agencies, if applicable.
 - 2. Develop comments in written format to the CITY for the applications, based upon the review. Include applicable comments previously generated from the CITY's review. Submit copies of the application review to CITY.
 - 3. Attend City Planning Commission and as requested by CITY to present, provide planning advise and to answer questions concerning comments and recommendations on the subject projects.
 - 4. Provide review of resubmitted application to verify that all comments have been addressed, and to verify that revisions do not cause internal conflicts or new issues.
 - 5. Develop public hearing notices, notifications related to zoning applicants, and similar processing tasks as requested by the CITY or work with applicable CITY staff to facilitate project-related notifications.

6. Development code amendments, ordinance amendments, and other special projects (e.g., Land Use Plan and Comprehensive Plan amendments, special planning-related research projects, etc.) as requested by the CITY (coordination and timing to be mutually agreed-to between the CITY and FNI). Attend periodic pre-application and/or project review meetings with applicants and CITY staff at the request of the CITY.
 7. Provide one (1) planner to travel to the CITY's offices, at the request of the CITY for meetings with staff, developers or other individuals or entities as directed by the CITY.
 - a. Provide virtual meeting space at the request of the CITY using WebEx, Microsoft Teams, or a similar platform with the CITY's agreement and to the CITY's reasonable specifications, and coordinate sharing access links, URLs, and other information pertinent to accessing the meeting in compliance with the Texas Open Meetings Act.
 - b. The specific scheduling for all trips to the CITY will be determined and mutually agreed-to by the CITY and vendor. All time spent at the CITY, shall be billed under the scope of this contract.
- N.** Professional services will be available for on-call questions from staff and meetings with and on behalf of staff, as directed and requested, providing one (1) or more planners as specified in Exhibit B on an as-needed basis, subject to availability.
1. Vendor will coordinate with and provide as directed all required documentation, reports, plans, renderings, and presentations to City staff, City Council, Boards and Commissions, the public, property owners, agencies, and businesses as required and requested.
 2. Vendor supplied professional service staff will coordinate and communicate with other entities, applicants, landowners, residents, and other involved parties, as directed, and requested.
 3. Vendor will understand and ensure compliance with associated local, State, and Federal requirements and provide guidance associated with developing trends and changes to regulatory practices, including but not limited to:
 - i. Local ordinances and development codes as needed
 - ii. The City's comprehensive plan and all area plans
 - iii. The City's development code
 - iv. The City's code of ordinances
 - v. The City's applicable plans and policies
 4. The Vendor's Planner will provide a weekly status email memo with progress and action that has been achieved that week to the City Planning Manager and/or Chief Planner.
 5. The Vendor's Planner will provide a summary of tasks associated with each zoning case reviewed and/or other applications and tasks as assigned at agreed milestones to the City Planning Manager and/or Chief Planner.
 6. The Vendor's Planner will maintain a comprehensive list of cases and tracking system for each zoning case and/or other tasks as assigned on a template to be provided by the Planning Manager and/or Chief Planner.

ARTICLE II

ADDITIONAL SERVICES:

As the nature of possible “other services” on-call assignments will vary dependent upon specific issues at hand, prior to any work the CITY and Vendor will meet or teleconference to define general scope, obtain an understanding of specific issues, define deliverables, and identify task schedule. Specific task assignments will be initiated with a simple letter of understanding, approved by both parties, addressing the task assignment and an estimate of budget to complete the assignment.

Additional Services to be performed, if authorized by Client, which are not included in the above-described basic services, are described as follows:

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to Client in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.

ARTICLE III

TIME OF COMPLETION: Project for services through 09/30/2026, with authorized renewal options for three additional one-year options, ending 9/30/2029, subject to appropriations.

ARTICLE IV | SCHEDULE HOURS, BILLING AND PAYMENT

- A. Professional Service staff will be available to work as requested and be available for trips to the City, performing the services described in A., above. Consultant and the City will mutually agree to a schedule for services in-office, including a beginning date and ending date. The Consultant shall be paid monthly following receipt and approval of invoices and an itemized log of time worked.
- B. The total billable services as needed and not to exceed:
 - \$722,255 Multi-Year Professional Planning Services
 - Consultant will quote on an hourly rate.
- C. The Consultant will submit invoices monthly, typically within the first seven days of the month following the month for which hours are billed.
- D. Consultant must submit an itemized log of time worked with each invoice and logged time must be categorized according to the types of projects or activities listed in item 2 under Services, and must include the name and description of each specific project or activity on which work was performed.

ARTICLE IV

INSURANCE REQUIREMENTS

For the duration of this service, Consultant will provide proof of Insurance Requirements set forth in Exhibit A attached to this Scope of Zoning Review and Planning Services.

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EXHIBIT B

**EXHIBIT B
COMPENSATION**

ATTACHMENT CO

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<u>Position</u>	<u>Hourly Rate</u>
Professional 1	151
Professional 2	181
Professional 3	206
Professional 4	237
Professional 5	278
Professional 6	318
Construction Manager 1	130
Construction Manager 2	163
Construction Manager 3	173
Construction Manager 4	219
Construction Manager 5	264
Construction Manager 6	303
Construction Representative 1	118
Construction Representative 2	130
Construction Representative 3	163
Construction Representative 4	173
CAD Technician/Designer 1	128
CAD Technician/Designer 2	167
CAD Technician/Designer 3	205
Corporate Project Support 1	123
Corporate Project Support 2	147
Corporate Project Support 3	197
Intern / Coop	75
Senior Advisor	175

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>	
Standard IRS Rates	<u>B&W</u>	<u>Color</u>
	Small Format (per copy)	\$0.10 \$0.25
	Large Format (per sq. ft)	
	Bond	\$0.25 \$0.75
	Glossy / Mylar	\$0.75 \$1.25
	Vinyl / Adhesive	\$1.50 \$2.00
	Mounting (per sq. ft.)	\$2.00
	Binding (per binding)	\$0.25

In general, no Services are to be performed in house by FNI (laptop(s) will be provided by the City, printing and reproduction will be at Dallas City Hall, and any outside procurement will be managed by City staff), except that printing and reproduction may be done in house by FNI if requested and approved in advance by the Director. In such a case, Reimbursable/Direct expense for printing and reproduction will be allowed, and costs for approved printing and reproduction will be reimbursed at the rates stated above. Reimbursable/Direct expense for mileage to site visits will also be allowed as a reimbursable expense if approved in advance by the Director. Mileage for approved site visits will be reimbursed at the federal/IRS mileage rate as stated above. Daily commute to Dallas City Hall not a reimbursable expense.

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Contract for Professional Consulting Services – Planning and Zoning Review (the “Contract”) between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional on-call zoning and planning services performed by FNI pursuant to and as defined in the Contract.
2. **INFORMATION FURNISHED BY CITY:** City will assist FNI by placing at FNI’s disposal all available information pertinent to the Services, including previous reports and any other data relative to the Services. FNI shall have no liability for defects or negligence in the Services attributable to FNI’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** FNI will perform all professional Services under the Contract with the professional skill and care ordinarily provided by competent members of the subject profession practicing under the same or similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the subject profession.
4. **INSURANCE:** FNI shall provide City with certificates of insurance with the minimum insurance coverage contained in Exhibit C to the Contract.
5. **CHANGES:** City, without invalidating the Contract, may order changes within the general scope of Services required by the Contract by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI’s cost or time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Contract will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under the Contract, but only to the extent that such changes and additional compensation and time required for performance of such changes are added to the Contract by written amendment executed by both parties and appropriately authorized by City, including the appropriate authorization and appropriation of any increase in compensation amount.

6. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for Services shall be due and payable upon submission of a statement for Services to City and in acceptance of Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly..

If City fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI’s statement for Services therefore, FNI may, after giving 7 days’ written notice to City, suspend Services under the Contract until FNI has been paid in full for all amounts due for Services actually performed.

7. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of Services provided under the Contract shall be the property of City upon payment of FNI’s fees for Services actually performed. FNI may retain copies for record purposes. Any reuse

by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. FNI may reuse all drawings, report data, and other project information in the execution of Services provided under the Contract in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.

8. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Contract shall create any contractual relation between any subcontractor and City.
9. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to the Contract. Should there be any conflict between the purchase order and the terms of the Contract, then the Contract shall prevail and be determinative of the conflict.
10. **ARBITRATION:** No arbitration, arising out of or relating to the Contract, involving one party to the Contract may include the other party to the Contract without their approval.
11. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to the Contract and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of the Contract.

Neither City nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) the Contract without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.

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EXHIBIT C

SECTION A.

CONSULTANT shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **SECTION C** (a), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The CITY shall be named as an additional insured by endorsement to the policy and thus will be entitled to notice of cancellation of the policy in accordance with Section 1811 of the Texas Insurance Code. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY CONSULTANT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

SECTION B.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the services or work performed by CONSULTANT and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions or other relevant factors. The CONSULTANT shall acquire and ensure execution of requests for deletions, revisions or modifications of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either CITY or CONSULTANT).

SECTION C. REQUIRED PROVISIONS

The CONSULTANT agrees, with respect to the required insurance as documented below, all certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a) The certificate of insurance or policy and endorsements shall be evidenced by delivery to:
 - (i) Planning and Urban Design, Attention: Suzanne McKenrick, 1500 Marilla Street, Dallas Texas 75201 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- b) All certificates of insurance shall identify the service or product being provided, by including the bid number and contract or solicitation name.
- c) All certificates of insurance shall name the City of Dallas as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to CONSULTANT'S right to maintain reasonable deductibles, CONSULTANT shall obtain and maintain in full force and effect for the duration of its engagement with the CITY and any extension hereof, at CONSULTANT'S sole expense, insurance coverage in the following type(s) and amounts:

1. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Consultants and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate.

The policy shall include:

- a) An endorsement naming the City of Dallas and its officers, employees and elected representatives as additional insureds.
- b) An endorsement to waive subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- d) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *twenty-four (24) months* following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy.

2. **PROFESSIONAL LIABILITY INSURANCE**

Professional Liability Insurance to provide coverage against any claim which the CONSULTANT becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000 per claim, \$1,000,000 annual aggregate.

The policy shall include:

- a) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- b) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *twenty-four (24) months* following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy

SECTION E. SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONSULTANT, the CONSULTANT shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONSULTANT as an additional insured.

(2) CONSULTANT shall obtain and monitor the certificates of insurance from each Subcontractor. CONSULTANT must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.


SECTION F. CONSULTANT LIABILITY

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by CONSULTANT or its subcontractors shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate CONSULTANT from liability.

SECTION G. INDEMNITY

CONSULTANT agrees to defend, indemnify and hold the 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, suffered by any person or persons, that may arise out of or be occasioned by CONSULTANT'S breach of any of the terms or provisions of its engagement with the CITY, or by any negligent or strictly liable act or omission of CONSULTANT, its officers, agents, employees, or subcontractors, in CONSULTANT'S performance under its engagement with the CITY; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONSULTANT and the CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONSULTANT (COMPANY NAME): Freese and Nichols, Inc.

BY: 
Signature of Authorized Representative

NAME: Wendy S. Bonneau, FAICP
Name of Authorized Representative (please print)

DATE: March 5, 2024

Signature: 
Ashley Stockton (Apr 9, 2024 09:52 CDT)

Email: ashley.stockton@dallas.gov

April 10, 2024

WHEREAS, on April 10, 2023, Administrative Action No. 23-5540 authorized a professional consulting services contract with Freese and Nichols, Inc. for zoning review and planning services (most responsive bidder) to augment current planning and development issues impacting the City, in an amount not to exceed \$99,980.00; and

WHEREAS, the City Council recognized additional services are needed and authorized appropriations in Fiscal Year (FY) 2023-24 and FY 2024-25 for Professional Zoning Review and Planning Services; and

WHEREAS, a Special Needs request was approved by the Assistant City Manager and deemed necessary by the Office of Procurement Services to prevent a significant disruption of services for zoning, conservation, and historic preservation applications; and

WHEREAS, Freese and Nichols, Inc., 2711 North Haskell Avenue, Suite 3300, Dallas, TX 75204 has submitted a proposal to continue providing these services for a term of two years, with three one-year renewal options.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager is hereby authorized to execute a two-year service contract, with three one-year renewal options, for professional consulting services with Freese and Nichols, Inc., approved as to form by the City Attorney, as a Special Needs request to continue assisting with zoning and planning applications and other planning review projects, in the amount of \$322,255.00 in Fiscal Year (FY) 2023-24 and in the amount of \$400,000.00 in FY 2024-25, for a total not to exceed \$722,255.00 (subject to annual appropriations).

SECTION 2. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$722,255.00 to Freese and Nichols, Inc. from the General Fund, Fund 0001, Department PNV, Unit 1172, Object 3070, Encumbrance/Contract No. PNV-2024-00024320, Vendor 347200.

SECTION 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED BY
CITY COUNCIL

APR 10 2024

CITY SECRETARY