

STATE OF TEXAS §
 § CONTRACT FOR EXTERNAL AUDIT SERVICES
COUNTY OF DALLAS §

THIS CONTRACT is made and entered into by and between the CITY OF DALLAS, a Texas municipal corporation, of Dallas County, Texas, (hereinafter called “City”) and WEAVER AND TIDWELL, L.L.P., a Texas limited liability partnership authorized to conduct business in the state of Texas, having its principal place of business at 2821 W. 7th Street, Suite 700, Fort Worth, Texas 76107 (hereinafter called “Auditor”).

1. PURPOSE

The purpose of this Contract is to state the terms and conditions under which Auditor shall provide independent auditing services for the City’s financial operations and grant activities for fiscal year ending September 30, 2020 through September 30, 2024 in accordance with Chapter III, Section 19 of the City Charter and pursuant to the terms specified herein (the “Services”).

2. DESCRIPTION OF SERVICES

Auditor’s Services hereunder shall include, but shall not be limited to, the following:

A. Auditor shall perform all the Services as set forth in City’s Request for Proposals, attached as **Exhibit A** and Auditor’s Proposal and Best and Final Offer, attached as **Exhibit B**, both of which Exhibits are made a part of this Contract for all purposes; provided, however, should there be any conflict between the terms of the Request for Proposals, the proposal, and the terms of this Contract, the terms of this Contract shall be final and binding, and the Request for Proposals shall control where it conflicts with the proposal.

B. Auditor shall work closely with City’s Controller, or his/her designee (hereinafter referred to as “Controller”), and other appropriate City officials as directed and shall perform any and all related tasks required by the Controller in order to fulfill the purposes of this Contract.

C. Auditor shall deliver to the Controller 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 Controller.

D. The audit reports and financial statements delivered to the City and produced under this Contract are public records and may be used to fulfill the requirements of continuing disclosure in Securities and Exchange Commission rule 15c2-1 2, as inserts or incorporated by reference in offering documents issued by the City; and for any lawful purpose of the City, all without subsequent consent. Occasionally, the City may request Auditors to perform additional procedures

related to official statements and regulatory filings. To avoid unnecessary delays or misunderstandings, the City agrees to give Auditors timely notice of the City's intention to issue such documents. The City may at its sole option choose to issue official statements without retaining Auditor to perform additional procedures thereon.

3. PERFORMANCE OF SERVICES

Auditor and its employees or associates shall perform all the Services under this Contract. Auditor 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 term of this Contract shall commence on October 1, 2020 and terminate on September 30, 2025. Auditor 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 Auditor and the Controller, unless an extension of time, based upon good reasons presented by Auditor, is approved by the Controller.

5. PAYMENT FOR SERVICES

In consideration of the professional Services to be performed by Auditor under the terms of this Contract, City shall pay Auditor for Services actually performed a fee not to exceed **FOUR MILLION TWO HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$4,231,500.00)**, 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. Auditor's charges for its Services are not to exceed similar charges of Auditor for comparable Services to other customers. Payments to Auditor shall be in the amount shown by the billings and other documentation submitted and shall be subject to the Controller's approval. All Services shall be performed to the satisfaction of the Controller 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 Controller. 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 Controller. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Auditor, 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 Controller, may request from time to time changes in the scope or focus of the activities, investigations and studies conducted or to be conducted by Auditor 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 Auditor shall be mutually agreed upon by Auditor and the Controller. Changes in the scope which in the

opinion of Auditor and the Controller 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 Auditor to assist Auditor's performance under this Contract) developed by, given to, prepared by or assembled by Auditor under this Contract shall be disclosed or made available to any third-party individual or organization by Auditor without the express prior written approval of the Controller.

8. OWNERSHIP OF DOCUMENTS

Upon acceptance or approval by City, all deliverables prepared or assembled by Auditor 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. Auditor 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, Auditor 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. AUDITOR'S LIABILITY

Approval of City shall not constitute or be deemed a release of the responsibility and liability of Auditor, its employees, agents, associates, or subconsultants for the accuracy and competency of the deliverables prepared by Auditor, 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 Auditor, its employees, agents, associates, or subconsultants.

10. COMPLIANCE WITH LAWS AND REGULATIONS

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. Auditor shall, during the course of 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. Auditor 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

Auditor'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. Auditor shall exercise independent judgment in performing Services under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract or act of Auditor in the performance of this Contract shall be construed as making Auditor the agent, servant or employee of City, or making Auditor 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

AUDITOR 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 AUDITOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF AUDITOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONSULTANTS, 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 AUDITORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF AUDITOR 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. AUDITOR 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. Auditor 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 Auditor or its subconsultants shall not relieve Auditor of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of

Auditor's insurer or any denial of liability by Auditor's insurer shall not exonerate Auditor from the liability or responsibility of Auditor set forth in this Contract.

15. CONFLICT OF INTEREST

A. Auditor and its employees, agents or associates are required to make regular, timely, continual and full disclosures to the Controller 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 Auditor'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 Auditor's performance of its duties under this Contract by the existence of Auditor'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 Auditor 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 Auditor to remove any employee of Auditor 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. AUDITOR, 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 Controller 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 Auditor, 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 Auditor assign and transfer to City all of Auditor’s rights and obligations under existing subcontracts it has to perform Contract work in the event of termination under this Section. City shall compensate Auditor 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 Controller. Auditor 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:

Controller
City of Dallas
Controller's Office
1500 Marilla Street, Room 2BS
Dallas, Texas 75201

If intended for Auditor, to:

Sara Dempsey, Partner (or successor)
Weaver and Tidwell, L.L.P.
2300 N. Field Street, Suite 1000
Dallas, Texas 75201

20. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

A. Auditor 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. Auditor 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. Auditor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Auditor agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

B. Auditor shall, in all solicitations or advertisements for employees placed by or on behalf of Auditor, 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. Auditor 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. Auditor 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 Auditor, and must be in the form that the City Manager or his designee prescribes.

E. If Auditor 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 Auditor 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 Auditor under this Contract. City is granted the right to audit, at City's election, all of Auditor's records and billings relating to the performance of this Contract. Auditor 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. Pursuant to Section 2271.002, Texas Government Code, the Auditor 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 Auditor 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.

29. CERTIFICATION OF EXECUTION

The person or persons signing and executing this Contract on behalf of Auditor, or representing themselves as signing and executing this Contract on behalf of Auditor, do hereby warrant and certify that he, she or they have been duly authorized by Auditor to execute this Contract on behalf of Auditor and to validly and legally bind Auditor 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.


[Remainder of page is intentionally blank. Signatures are on the following page.]

EXECUTED this, the 8th day of October, 2020, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 20- 1444, adopted by the City Council on September 23, 2020, and by Contractor, acting through its duly authorized official.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO
City Attorney

CITY OF DALLAS
T. C. BROADNAX
City Manager

BY 
Christina Sevoukas (Oct 8, 2020 15:44 CDT)
C.T. Assistant City Attorney

BY 
Joey Zapata (Oct 8, 2020 13:02 CDT)
Assistant City Manager


MER

AUDITOR:
WEAVER AND TIDWELL, L.L.P
a Texas limited liability partnership

BY 
Sara Dempsey (Sep 14, 2020 17:20 CDT)

C.T.

PRINTED
NAME Sara Dempsey

TITLE Partner