

PROFESSIONAL SERVICES AGREEMENT
for
INNOVATIVE TRANSPORTATION SOLUTIONS, INC.

The City of Lewisville, Texas (the “City”), hereby engages Innovative Transportation Solutions, Inc., (the “Consultant” or “ITS”), to perform professional services in connection with transportation consultation services (the “Project”).

1. PROJECT. The Project is described as follows:

- A. I-35E Corridor:** ITS to coordinate with TxDOT, North Central Texas Council of Governments (NCTCOG), City of Lewisville, and other stakeholders to advance efforts on the next phase of the critical I-35E project, specifically as it relates to:
- Break-Out Projects: Intersection improvements within the city limits at FM 1171, Business 121/Corporate Drive, Mill Street Realignment, I-35E/FM 3040/Hebron Parkway Interchange, I-35E Operational Improvements, and I-35E from I-635 to the county line
 - Aesthetics Assistance
 - Utility Relocations
 - ROW Acquisition Monitoring
 - Maintenance Monitoring
- B. Old Town Transit-Oriented Development Phase II:** ITS to assist the city staff with submittals to North Central Texas Council of Governments for funding opportunities, funding conversion, and funding agreement, as well as coordination with NCTCOG for documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- C. Corporate Drive:** ITS to assist the city staff with coordination with North Central Texas Council of Governments on the maintenance of TIP/STIP accounting, documentation needed for same, and monitoring of opportunities for additional funding.
- D. Trail Projects:** ITS to assist the city staff with monitoring funding opportunities for trail projects, coordination with TxDOT regarding plan review and agreements, and coordination with North Central Texas Council of Governments for documentation required for implementation and reimbursement process for funding procured.
- E. Business 121 Lighting:** ITS to assist the city staff with the corridor study underway, coordination with TxDOT for funding opportunities, and coordination with city consultant for study.

- F. **Huffines Boulevard**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- G. **Railroad Street**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- H. **Valley Parkway/Civic Circle**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- I. **West College**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- J. **S. Kealy Avenue**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- K. **S. Charles Street**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.
- L. **McKenzie-Henbry**: ITS to assist the city staff with documentation needed on the project throughout the implementation and reimbursement process for funding procured.

2. SCOPE OF SERVICES.

- A. **Strategic Planning and Funding Consultation**: ITS to provide assistance with the city's transportation needs and continuously seek funding sources to achieve the city's transportation goals.
- B. **Regional Transportation Policy Development and Implementation**: ITS to monitor numerous transportation entities for possible opportunities and impacts to key City of Lewisville projects and continue efforts toward placement of key City of Lewisville projects on the NCTCOG's TIP and UTP programs with appropriate funding commitments.
- C. **Various Tasks**: As needs are identified by key city personnel, ITS to provide recommendations for project improvements, coordinate with TxDOT and other key transportation agencies, monitor project schedules, and provide any additional services that may be requested by City of Lewisville officials.

3. **COMPENSATION.** The total fee for services provided under this Agreement shall not exceed \$90,000.00 (the “Annual Fee”) during the Term (hereinafter defined) or \$7,500.00 (the “Monthly Payment”) per month during the Term.

Invoices shall be submitted by cover letter from the Consultant. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on percentage of work completed per identifiable unit of work. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

4. **INSURANCE.** The Consultant agrees to maintain insurance throughout the term of the Agreement, in accordance with Attachment “A”. All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Consultant. Insurance certificate must be received and approved prior to commencement of work. The Consultant shall also review and forward certificates covering sub-consultants.
5. **REUSE OF DOCUMENTS.** All documents, including drawings and specifications prepared by the Consultant pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at City’s sole risk and without liability or legal exposure to the Consultant from all claims, damages, losses and expenses including attorney’s fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon in writing by the City and the Consultant.
6. **OWNERSHIP OF DOCUMENTS.** Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Consultant. The Consultant shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.
7. **THE 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 THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR**

OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT AND THE 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. 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.

8. **TERM.** The term of this Agreement (“Term”) shall begin on April 1, 2024 and end on March 31, 2025.
9. **TERMINATION.** This Agreement may be terminated without cause at any time prior to completion of the Consultant’s services by the City, or by the Consultant with cause, upon seven days written notice to the City at the address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Paragraphs 5, 6 and 7 above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
10. **CONFIDENTIAL INFORMATION.** To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
11. **INDEPENDENT CONTRACTOR.** Consultant shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and Services. No term or provision herein or act of the City shall be construed as changing that status.
12. **ADVERTISING.** Consultant shall not advertise or publish, without the City’s prior consent, the fact that the Consultant has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

13. **NOTICE.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Consultant, to: Innovative Transportation Solutions, Inc.
Attn: John Polster, President
2701 Valley View Lane
Farmers Branch, TX 75234

If to City, to: City of Lewisville
Attn: Tracey Ogurek, Purchasing Manager
151 W. Church Street
Lewisville, Texas 75057

14. **GOVERNING LAW AND VENUE.** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
15. **GOVERNMENTAL IMMUNITY.** Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.
16. **ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
17. **COMPLIANCE WITH LAWS.** The Consultant shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.
18. **PROTECTION OF RESIDENT WORKERS.** The City of Lewisville actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Consultant shall establish appropriate procedures and controls so no services under the Agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement. The audit will be at the City's

expense.

19. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Consultant shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant and its Subcontractors shall at all times during the term of the Agreement with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate the Agreement with the Consultant if the City determines that (a) the Consultant or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Consultant fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Consultant or its Subcontractors fail to timely notify the City of an IRCA violation.
20. **ADA COMPLIANCE.** All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.
21. **SUCCESSORS AND ASSIGNS; ASSIGNMENT.** The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other, and assignment without such consent shall be void. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.
22. **REPRESENTATIONS.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
23. **MISCELLANEOUS DRAFTING PROVISIONS.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
24. **FORCE MAJEURE.** If by reason of Force Majeure, the Consultant shall be rendered unable wholly or in part to carry out its obligations under this Agreement then the

Consultant shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Consultant, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean any contingency or cause beyond the reasonable control of the Consultant created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Consultant), fire, explosion or flood, strikes; provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Consultant and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Consultant gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

25. **DISCLOSURE.** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

26. **TEXAS GOVERNMENT CODE CHAPTER 2252.** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Consultant affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
27. **ENTIRE AGREEMENT.** This Agreement and its exhibits contain the entire agreement of the parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Consultant, and no amendment to the Agreement shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.

28. **CLOSURE.** By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

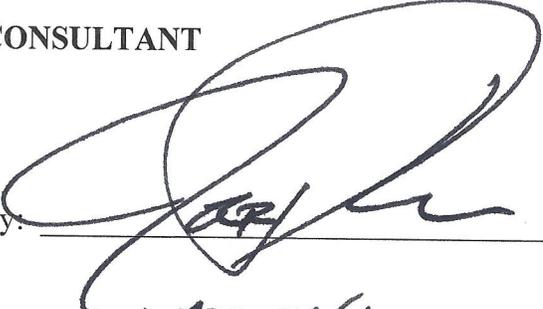
CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

By: _____
Claire Powell, City Manager

Date: _____

Attest: _____
Julie Worster

CONSULTANT

By:  _____

Date: 1 APR 24

Attest: Tom H. Plot

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney