

Approved by contractor and approved as to form by City Attorney.

**PROFESSIONAL SERVICES AGREEMENT
FOR MARKETING SERVICES
BETWEEN
DEEP ROOTS SMALL BUSINESS SERVICES AND
THE CITY OF JOHNSON CITY, TEXAS**

This Professional Services Agreement for Marketing Services (“Agreement”) is entered into by and between the City of Johnson City, Texas (“City”) and Deep Roots Small Business Services (“Consultant”), individually the “Party”, collectively the “Parties”.

Whereas, Texas Tax Code Section 351.101 provides for the expenditure of hotel occupancy taxes by a city to promote tourism and the convention and hotel industry in a city; and

Whereas, the City desires to develop a destination brand and strategic marketing campaign to promote and enhance tourism in the City in accordance with state law; and

Whereas, the City issued a request for proposal and upon review of proposals submitted, desires to obtain the marketing services of Consultant, and Consultant agrees to provide said services pursuant to this Agreement.

Now therefore, in consideration of the mutual agreements and covenants set forth herein, the Parties agree as follows:

1. **Scope of Services.** Consultant’s services shall encompass the following:
 - a. Develop a marketing campaign to promote the City as not only an overnight destination, but also a year-round leisure tourism destination;
 - b. Design and implement advertising campaigns with regional, state, and national coverage featuring the City as an attractive tourism location;
 - c. Create and develop strategic marketing campaigns consisting of digital, social, and print media;
 - d. Create and develop a brand identity including, but not limited to, a brand guide;
 - e. Create marketing promotions to support local events which draw and create overnight visitors;
 - f. Develop content for website pages and materials on the City’s website; and
 - g. Promote the Visitor Information Center as a point of contact for inquiries and information to attract visitors to the City’s lodging facilities.
2. **Effective Date; Term.** This Agreement shall be effective upon the latest date of its execution by the Parties, and shall continue for one year unless terminated sooner as provided herein. The City may, at its discretion, extend or renew this Agreement for additional three

(3) one (1) year terms upon approval by City Council. Any extension is subject to and contingent upon the annual fiscal year budget appropriation by the City Council.

3. Production of Services.

a. Consultant shall perform and complete all necessary evaluation, design, and related functions required as outlined in the City's *Request for Qualifications/Proposals Marketing/Creative/Media Buying/Public Relations Services* attached hereto as "Exhibit A" and incorporated fully herein, ("RFQ").

b. Consultant shall produce, subject to the approval of the City as provided below, the following deliverables at the rates indicated:

▪ **Phase One**

○ Details to be determined.

○ Consultant shall attend a minimum of two (2) City Council public meetings and present progress and status updates.

○ Consultant shall be available and participate in any public involvement activities related to this Agreement.

▪ **Phase Two**

○ Details to be determined.

○ Consultant shall attend a minimum of two (2) City Council public meetings and present progress and status updates.

○ Consultant shall be available and participate in any public involvement activities related to this Agreement.

▪ **Phase Three**

○ Details to be determined.

○ Consultant shall attend a minimum of one (1) City Council public meeting and present progress and status updates.

○ Consultant shall be available and participate in any public involvement activities related to this Agreement.

c. Prior to implementation of any Phase outline above, Consultant shall submit completed proposed marketing campaigns, *e.g.*, hard copy and digital forms, to the City for review and approval as provided below. The City shall decide whether to issue a Notice to Proceed letter. Consultant shall not perform any work without a Notice authorizing such work. Any work

performed by Consultant prior to receipt of a Notice to Proceed letter shall not be paid for by the City.

4. Service Performance Criteria and Standards

a. Consultant shall conduct all evaluation, design, and related functions required for the development of a brand identity in accordance with City approved specifications and standards as contained in the City's RFQ.

b. Consultant shall be responsible for the completeness and accuracy of all designs, drawings, and specifications submitted by or through the Consultant, including their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

c. All design work by Consultant shall be complete and include all components necessary to function properly in electronic, paper, and/or other pertinent medias.

d. Consultant's work shall comply with all applicable state, local, and federal standards for marketing and public relations services.

e. Consultant shall exercise a degree of care and diligence in the performance of all services under this Agreement and shall perform all responsibilities under the standard of care and skill ordinarily exercised by members of the public relations and marketing profession performing similar services. Consultant's services shall be performed as expeditiously as is consistent with said standards and the orderly progress of the Project.

f. Review and Approval. All work by Consultant shall be performed to the satisfaction of the City. Any services or products not accepted by the City due to nonconformance with these requirements must be corrected or reworked by Consultant at no charge to the City. Failure by Consultant to produce and provide acceptable and suitable services or products in accord with this Agreement shall serve as ground for termination of this Agreement. Determination of acceptance by the City is final, binding, and conclusive. Final acceptance and approval by the City shall be in writing.

5. Compensation; Payment; Fees and Costs.

a. The total compensation amount for services shall be a lump sum fee not to exceed \$_____ for the term of this Agreement. Consultant shall be responsible for payroll and related taxes.

b. Consultant shall submit a detailed monthly invoice itemizing services performed to the City, and City shall remit payment within thirty (30) days of receipt payable to Consultant at the respective address provided herein.

c. The total cost of projects within Phases One, Two, and Three do not include photography, print costs, or ad placement.

d. No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by the City unless approved by the City pursuant to a duly authorized change order. The Parties agree that all compensable expenses of Consultant have been provided for in the total compensation to Consultant, as specified above. Total payments to Consultant cannot exceed that amount without written prior approval and agreement of the Parties and City Council.

6. Insurance.

a. Consultant shall procure and maintain, at its expense, for the term of this Agreement vehicular, operational, professional, and contractual liability insurance with a company authorized to transact business in the State of Texas.

b. Said insurance shall be in amounts as follows:

1) Commercial General Liability insurance with limits of not less than \$2,000,000 general aggregate limit and \$1,000,000 each occurrence, combined single limit;

2) Professional liability errors and omissions: not less than \$1,000,000 each claim/annual aggregate;

3) Workers Compensation at statutory requirements.

c. The certificates of insurance shall name the City as Additional Insureds and shall also contain a statement requiring a minimum of thirty (30) days advance written notice of cancellation, non-renewal, or material restriction of coverage terms or limits, to be provided to the City from the insurance company by signed receipt delivery at the address listed herein.

d. Consultant shall provide evidence of insurability to the City prior to provision of services.

7. Ownership; Documents.

a. All writings, documents, drawings and photographs, information and/or source files in whatsoever form and character produced by Consultant pursuant to the Agreement shall be the exclusive property of the City and no such writings, documents, information, or source files shall be subject to any copyright, trade marking, or proprietary claim by Consultant. Consultant understands and acknowledges that, the City, as the exclusive owner of any such writings, documents, information, and source files, has the right to use all such writings, documents, information, and source files as the City desires without restriction.

b. Consultant shall maintain all documents and shall retain said documents for a period of ten years after termination of this Agreement. Consultant shall provide electronic files or documents to the City upon request and at no additional cost to the City.

c. Reproductions of such records, information, materials, and other work products in whole or in part may not be used for any other purpose outside of this Agreement by Consultant.

d. Public requests for documents made to Consultant shall be referred to the City for processing and disposition.

e. This obligation shall survive termination of this Agreement.

8. Independent Contractor; No Joint Venture or Third-Party Rights. Consultant is an independent contractor and shall not be considered an employee or agent of the City. Consultant shall be responsible for the acts and omissions of its employees and/or subcontractors. This Agreement shall not be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, or any other association between the Parties, other than the relationship described herein. This Agreement is not intended to confer any, rights, privileges, or causes of action upon any third party. The City shall not be obligated or liable under this Agreement to any party, other than to the Consultant, for the payment of any monies or the provision of any goods or services.

9. Social Media and Website Policy. Consultant understands that for this project, while considered an independent contractor, Consultant in its duties as a city promoter serves as a representative of the City. As such, Consultant agrees to abide by the following rules of conduct regarding the use of social media and websites and relating to the City and City business:

a. In postings on social media accounts or websites, Consultant shall state clearly that “the views expressed on this site are Consultant’s (name of affiliated individual) personal views only, and they do not reflect the views of the City of Johnson City, its staff, or its officials.” This statement shall be placed as a disclaimer and should be included along with any post that would otherwise violate this section;

b. Consultant’s personal social media accounts or websites may not be designated in a way that would cause users to believe that the site is administered or endorsed by the City, including the unauthorized use of City logos or City trademarks;

c. Consultant is prohibited from posting on personal or social media accounts or websites sexually explicit images, videos, cartoons, jokes, messages, or other material that would be considered derogatory to the City; and

d. For online safety, Consultant shall not provide personally identifiable information within social media accounts or websites, including addresses, telephone numbers, or e-mail addresses.

10. INDEMNIFICATION.

a. CONSULTANT AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND CITY’S ELECTED OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, DAMAGES, SUITS, COSTS, INCLUDING ATTORNEY’S FEES, AND CAUSES OF ACTION OF ANY NATURE WHICH ARISE OUT OF CONSULTANT’S PERFORMANCE OF THE DUTIES AND ACTIVITIES UNDER

THIS AGREEMENT INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, EMPLOYEE, OR SUBCONTRACTOR OF CONSULTANT.

b. IN ADDITION, CONSULTANT AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND CITY'S ELECTED OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL DAMAGES, INCLUDING ATTORNEY'S FEES AND COURT COSTS, SUFFERED, OR INCURRED BY THE CITY ARISING FROM ANY TRADEMARK INFRINGEMENT OR CLAIM OF TRADEMARK INFRINGEMENT RESULTING FROM CONSULTANT'S PERFORMANCE IN CONNECTION WITH THIS AGREEMENT.

c. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF OR RELINQUISHMENT OF GOVERNMENTAL OR SOVEREIGN IMMUNITY BY THE CITY.

d. THE INDEMNITY PROVIDED HEREIN SHALL SURVIVE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT.

- 11. Waiver of Contractual Right.** A waiver by either Party of a breach of this Agreement must be in writing to be effective. Such waiver shall not affect the waiving party's rights with respect to any other or subsequent breach. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of limitation to that Party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
- 12. Applicable Law; Venue; Legal Fees.** The laws of the State of Texas shall govern this Agreement. Venue for any disputes arising under this Agreement shall be in Blanco County, Texas. In the event of litigation, each Party shall be responsible for its own costs and fees of negotiation, mediation, or litigation.
- 13. Severability.** The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.
- 14. Termination.**
 - a. This Agreement may be terminated:
 - 1) By either Party for convenience upon 30-day advance notice to the other Party;
 - 2) By either Party for cause upon notice setting forth the basis for the termination and failure by the recipient party to cure the default described in the notice within ten business (10) days after the date of the notice;
 - 3) By the City for failure by Consultant to produce and provide acceptable and suitable services or products in accordance with the standards of this Agreement; or

4) In the event of Consultant's bankruptcy or discontinuance of its business.

b. Upon termination in either of these circumstances, compensation shall be paid to Consultant for services provided up to the date of termination; except compensation shall be based at hourly rate of \$ _____/hour where termination is based on unsatisfactory and/or disapproved services. Consultant shall submit to the City for approval within 30 days of the date of termination an itemized invoice of time and services performed, and shall deliver to the City all plans and documents of work performed up to the date of termination. Compensation shall issue upon receipt of these items.

15. **Notice.** Any notice required shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed to the party at the address shown herein. A notice shall be deemed delivered when received if delivered personally or if sent by Federal Express or other carrier, or 72 hours after deposit if sent by First Class, certified mail, return receipt requested, through the U.S. Postal Service.
16. **Assignment.** This Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the parties.
17. **Entire Agreement; Amendment.** This Agreement, together with its exhibits, represents the final and entire agreement between the Parties. This Agreement supersedes any prior oral or written communications, representations, or agreements between the Parties. This Agreement may be modified or amended at any time in writing signed by both Parties and upon City Council approval.
18. **Authority; Counterparts.** Each person who signs this Agreement states that he has the express authority to sign this Agreement and to bind the entity he represents to all the terms and conditions stated herein. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document. Facsimile or electronic transmission of executed signatures are deemed to constitute fully enforceable and binding originals.

Remainder of page intentionally left blank.

Signature page[s] follow.

IN WITNESS WHEREOF, the Parties, by their authorized representative, agree and execute this Agreement and to be effective as of the last written date indicated below.

CITY OF JOHNSON CITY, TEXAS – “CITY”

Rhonda Stell, Mayor
City of Johnson City
P.O. Box 369
303 E. Pecan Drive
Johnson City, Texas 78636

Date

Attest:

Whitney Walston, City Secretary

Date

DEEP ROOTS SMALL BUSINESS SERVICES - “CONSULTANT”

401 E. Main Street
P.O. Box 2107
Johnson City, Texas 78636

Signature

Date

Printed Name and Title

EXHIBIT A

City of Johnson City
Request for Qualifications/Proposals
Marketing / Creative / Media Buying / Public Relations Services



**VISIT JOHNSON CITY
REQUEST FOR QUALIFICATIONS / PROPOSALS
MARKETING / CREATIVE / MEDIA BUYING / PUBLIC RELATIONS SERVICES**

**Bids Due: January 27, 2023 at 3 p.m. CST
303 E. Pecan Dr. (Physical)
P.O. Box 369 (Mailing)
Johnson City, Texas 78636
(830) 868-7111 (830) 868-7718 fax**

VISIT JOHNSON CITY

MARKETING & PUBLIC RELATIONS SERVICES – REQUEST FOR QUALIFICATIONS / PROPOSALS

The City of Johnson City, Texas requests that each firm provide a written presentation outlining the firm's qualifications for marketing, creative, media buying, and public relations services.

BACKGROUND

The City of Johnson City, Texas (the "City") is a Type A General Law Municipality located within the Texas Hill Country. Incorporated in 1944, Johnson City seeks to promote tourism and the convention / hotel industry through marketing research, advertising, and public relations efforts.

Each respondent shall furnish the information required in the Scope of Services. Responses submitted in any other format may be rejected at the sole discretion of the City.

It is the respondent's responsibility to ensure that responses are received by the City, 303 E. Pecan Dr. (Physical), P.O. Box 369 (Mailing), Johnson City, Texas 78636, no later than the closing deadline stated on the cover page. Responses received after the closing deadline will not be accepted or considered. No telegraphic or facsimile responses will be considered.

All responses must be submitted with one (1) original and two (2) copies. The original and copies must include the Request for Qualifications / Proposals cover page, the signature section, any section on which annotations are required or exceptions are taken, and any supporting documentation or literature being submitted with the response.

It will be the responsibility of the respondent to contact the City prior to submitting a response to ascertain if any addenda have been issued, to obtain all such addenda, and to return executed addenda with their response.

The winning respondent will report directly to the Chief Administrative Officer (CAO) on its activities in accordance with other policy. The winning respondent will be required to present updated materials, ideas, and designs to the City Council quarterly.

The winning respondent will assume responsibility for the performance of all required services, whether or not subcontractors are involved. The City will consider the winning respondent to be the sole point of contact with regard to all materials and will not maintain contacts with any subcontractors. The winning respondent will specify any subcontractors it intends to use and what their function(s) will be.

All materials, ideas, designs, and layouts developed for the City under this contract are the property of the City, may not be used for any other purpose without prior written consent, and will remain the sole property of the City regardless of termination of services for any reason. If

subcontractors are used, the winning respondent shall obtain all necessary releases to ensure all materials, ideas, and layouts are the property of the City.

RESPONSE AND SIGNATURE SECTION

The City reserves the right to reject any or all responses, without recourse, to waive technicalities, or to accept the response which, in its judgement, best serves the interests of the City. Respondent's submittal costs are considered an operational cost of respondents and shall not be passed on to or be borne by the City.

The City reserves the right to request any additional information needed for clarification from any respondent(s) during the evaluation period of the responses.

Failure to comply with these instructions may be cause of disqualification of your response.

_____ Firm

_____ Date

_____ Authorized Signature

_____ Print Name and Title

RFQ / P responses and any questions regarding this RFQ / P should be addressed and submitted to:

Rick A. Schroder, Chief Administrative Officer
303 E. Pecan Dr. (Physical)
P.O. Box 369 (Mailing)
Johnson City, Texas 78636
(830) 868-7111 (830) 868-7718 fax
rschroder@johnsoncitytx.org

GENERAL PROVISIONS

Any contract resulting from this RFQ / P is deemed effective only to the extent of funds available, and it shall contain the following provisions. At the time of contracting services, materials, equipment, or other items, other provisions may be added, as determined by the City.

Any permits, licenses, or fees required will be the responsibility of the respondent and no separate payment will be made for same.

All documents and other materials made or received in conjunction with this project will be subject to the public records disclosure requirements of State Law, unless exempted therein. Responses will become part of the public domain upon opening and respondents shall not submit information or pages either marked "proprietary" or otherwise restricted in any way.

Special Provision – There is one (1) attachment to this RFQ / P and is to be attached with the completed RFQ / P by respondent. **Attachment A – Insurance and Risk Management Requirements**

SCOPE OF SERVICES

The purpose of the RFQ / P is to obtain the service of an agency qualified to handle the City of Johnson City, Texas and its goal to promote tourism and the convention / hotel industry. The City is seeking a full-service marketing / creative / media buying / public relations firm with extensive experience in destination marketing.

Advertising, promotions, and public relation efforts are targeted to, but not limited to, major domestic markets throughout the State of Texas and North America.

The winning respondent shall be the principal provider and / or advisor to the City for the following related services:

1. Creation and development of a creative advertising strategy and overall advertising campaign.
2. Production and execution of an advertising campaign.
3. Evaluation of advertising (creative) campaigns.
4. Provide strategic recommendations / input to the City on a quarterly and annual basis.
5. Media planning and buying.
6. Creation and host of the Visit Johnson City website and any other sub-websites that are owned by the City.
7. Create advertising components that are consistent with print, online, television, radio, and social media campaigns.
8. Other related advertising / marketing activities, as directed.

The City requires unique, innovative concepts and strategies that will produce quantifiable results.

The winning respondent will work with City Staff and should be able to suggest strategies to expand the impact of a branding and marketing campaign, while allowing for the broadest possible exposure. Such strategies may include maximizing the use of cooperative advertising, as well as identifying promotional and public relations opportunities.

RESPONSE FORMAT

Response must be submitted on paper (numbered, typed, with headings, sections, and subsections identified appropriately).

All respondents shall submit all required information at the time of the submission of responses. Failure to provide the required information will affect the evaluation of the response.

1. Transmittal Letter

The letter must be on official business letterhead of the organization proposing to become the winning respondent. The letter is to transmit the RFQ / P and shall identify all material and enclosures being forwarded.

2. Organization Ownership and Management

- a. Provide the name, address, and telephone number of the legal entity with whom the contract will be written and all trade names used.
- b. Provide the name, address, and telephone numbers of the organization's principal officers and other owners, as well as subcontractors identified in the proposal.
- c. Identify type of business (sole proprietorship, partnership, corporation, etc.).
- d. If respondent is a corporation, provide copy of the certification from Texas Secretary of State verifying respondent's status and good standing.
- e. Provide FEIN (Federal Employer Identification Number) of respondent or SSNs (Social Security Number) in the case of sole proprietorship or partnerships.

3. Organization's Structure and Experience

- a. Provide an organizational chart of the organization, including contact points between the organization and the City. Include all subcontractors to be employed on the project.
- b. Disclose the organization's total number of employees, both full and part time.
- c. Provide a short history of the organization and include a history of subcontractors to be employed on these projects.
- d. Disclose the name(s) of the person(s) in the organization management who will work on the account and how much of his or her time will be spent on the account.
- e. Provide a summary noting the qualifications and experience of each person who will work on the account, as well as any subcontractors.
- f. Provide hours of operation and staffing availability.
- g. Describe the organization's experience in tourism, or directly related field. Include tourism experience of all subcontractors.

- h. Identify any accounts the organization is handling which may be perceived to be in competition with the City or which may pose a conflict of interest.
 - i. Provide examples of work developed by your creative team in each medium: online, social media, print, television, radio, collateral, direct mail, and, if available, interactive media. Work examples should include standard objectives, target audience, strategy, and results of each medium.
 - j. Any additional information that respondent considers pertinent for consideration should be included in a separate section of the response.
- 4. Proximity to and Familiarity with the City of Johnson City, Texas
Describe the respondent's familiarity with the City of Johnson City, Texas, or similar city.
- 5. Client Information for each Area of Concentration (Marketing / Creative, Media Buying, Public Relations, Website Creation/Management / Hosting)
 - a. List your current clients in declining order of size and the years you have worked for them.
 - b. Name the two most recent past clients. Have any of these terminations been due to agency non-performance? If so, explain.
 - c. Provide names of any travel / tourism clients you now serve.
 - d. Provide a list of accounts gained in the past two years and comment on why your organization was chosen to service these new accounts.
- 6. Billing
 - a. Provide methodology and options for pricing all projects that may be assigned through the contract term as it relates individually to advertising, creative, public relations, marketing services, and website creation, maintenance, and hosting.
 - b. Identify percent (%) commission on media buys.
- 7. Additional Information
Any additional information that respondent considers pertinent for consideration should be included in a separate section.

CONSIDERATION OF RESPONSES AND EVALUATION

SELECTION PROCESS

The Chief Administrative Officer will receive responses from potential respondents in response to this RFQ / P. Based on the responses to the criteria listed in the RFQ / P, the Chief Administrative Officer will short list respondents for further consideration.

Short-listed respondents will be invited to make formal presentation(s) to the City Council. The

City Council will evaluate the responses and rank the respondents with whom negotiations shall be pursued. Negotiations will begin with the most responsive / responsible respondent until a mutually-agreeable contract is reached with one of the ranked respondents. The proposed contract shall be submitted to the City Council for approval.

ATTACHMENT A – INSURANCE REQUIREMENTS

Respondent shall provide the following described insurance, except for coverage specifically waived by the City, on policies with insurers acceptable to the City.

The insurance requirements shall not limit the liability of the respondent. The City does not represent that these types and amounts of insurance are sufficient or adequate to protect respondent's interests or liabilities, but are merely minimums.

Respondent's insurance policies shall be endorsed to name the City as an additional insured to the extent of the City's interests arising from any contract or agreement between the City and respondent.

Respondent waives its right of recovery against the City to the extent permitted by its insurance policy limits.

- Workers' Compensation insurance in accordance with the laws of the State of Texas.
- Commercial General Liability insurance with limits of not less than:
 - \$2,000,000 General Aggregate Limit; and
 - \$1,000,000 Each Occurrence, combined single limit.
- Professional Liability and Errors and Omissions insurances with limits not less than \$1,000,000 each claim/annual aggregate.