



Duncanville City Council Joint Meeting with DCEDC Board

Meeting Agenda

Wheatland Plaza
544 E. Wheatland Rd. - Collab Space
Duncanville, TX 75116
(972) 780-5017

AMENDED

**Tuesday, July 30, 2024
6:00 PM**

City of Duncanville City Council meetings are available to all persons regardless of disability. The City of Duncanville offers Hearing Assistance Receivers for use during City Council Regular Sessions. If you require special assistance, please contact the City Secretary at (972)780-5017 or write 203 E. Wheatland Road, 75116, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purposes of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

Pursuant to Texas Government Code 551.127, one or more members of the governing body may appear via videoconference call. The presiding officer and a quorum of the City Council must be physically present at the above stated location.

The City of Duncanville reserves the right to reconvene, recess or align the Regular Session or called Executive Session or order of business at any time prior to adjournment at the direction and agreement of Mayor and Council.

This is an open meeting conducted in-person and will be broadcast by website and social media channels.

The meeting live stream will be available starting at 6:00 P.M. through YouTube by visiting
www.youtube.com/@CityofDuncanvilletx

To submit a comment via email the following information is required:

- Submit a comment by 4:00 p.m. on Tuesday, July 30, 2024.
 - Email city.secretary@duncanvilletx.gov
 - Email title: Public Comment – Tuesday, July 30, 2024
 - First Name, Last Name, and Address
-

CALL TO ORDER

EXECUTIVE SESSION

1. City Council shall convene in Executive Session pursuant to Section 551.072 of the Texas Government Code, to deliberate the sale, exchange, lease, purchase, or value of certain real property located north of Wheatland, south of Interstate 20, and west of US Highway 67, and, pursuant to Section 551.071 of the Texas Government Code, to seek legal advice from the City Attorney regarding the same. 4 - 5

[Executive Session - Pdf](#)

2. CITIZENS' INPUT

In-person citizen comments will be heard during the Regular Session. In keeping with the City Council's Rules of Procedure adopted on June 4, 2024, electronic mail comments will no longer be read aloud. Paper copies will be provided to the City Council at the dais. The comments will be made a part of the public record in the minutes.

"Pursuant to Section 551.007 of the Texas Gov't Code, any member of the public has the opportunity to address the City Council concerning any matter of public business or any posted agenda item; however, the Act prohibits the City Council from deliberating any issues not on the public agenda and such non-agenda issues may be referred to City staff for research and any future action; all persons addressing are subject to council adopted rules and limitations permitted by law"

At this time, two-minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. In accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions at this time. Issues may be referred to City Staff for research and possible future action.

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Take any necessary action as a result of the Executive Session.
- B. Council and Duncanville Community and Economic Development Board to discuss the status of Wheatland Plaza, including: 6 - 7
 - Current progress of the project
 - Next Steps
 - Co-lab space
 - Financials update

[Wheatland Plaza - Pdf](#)
- C. City Council and the Duncanville Community and Economic Development Corporation Board Members to discuss the following: 8 - 27

- status of working together
- Council appointments to the board
- appointing a subcommittee to review bylaws of DCEDC
- general status of the DCEDC as it relates to the DCEDC's mission

[City Council and DCEDC Discussion - Pdf](#)

- D. Consider a resolution approving a professional services agreement with MRB Group to provide an update to the City's Comprehensive Plan and authorizing the City Manager to sign and execute all documents associated with the agreement.

28 - 72

[Comprehensive Plan Update Agreement - Pdf](#)

ADJOURNMENT

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located outside the entrance to the City of Duncanville City Hall, next to the entryway doors, a place convenient and readily accessible to the general public, as well as to the City's website www.duncanvilletx.gov and said Notice was posted **by** the following date and time: **Friday, July 26, 2024, by 5:00 P.M.** and remained posted for at least two hours after said meeting was convened.

Chiquita Taylor, City Secretary

"Guns prohibited on these premises by state law unless licensed under Chapter 411, Tex. Gov. Code. Section 46.035 Texas Penal Code."

"Las armas de fuego están prohibidas en estas instalaciones por la ley estatal a menos que estén autorizadas bajo el Capítulo 411 del Código de Gobierno de Texas. Sección 46.035 del Código Penal de Texas."



STAFF REPORT

MEETING: City Council Joint Meeting w/DCEDC - 30 July 2024

TITLE:

City Council shall convene in Executive Session pursuant to Section 551.072 of the Texas Government Code, to deliberate the sale, exchange, lease, purchase, or value of certain real property located north of Wheatland, south of Interstate 20, and west of US Highway 67, and, pursuant to Section 551.071 of the Texas Government Code, to seek legal advice from the City Attorney regarding the same.

Vision Statement:

“Duncanville, a City of Champions, is a safe, vibrant, diverse community committed to excellence in education, business, and good governance.”

Pillar:

- **Re-Imagine: High Quality of Life**
 - **Develop, maintain, and encourage safe, attractive, viable family-oriented neighborhoods that embrace diversity and pride, promoting economic vitality.**

STAFF RESPONSIBLE:

Douglas Finch, City Manager

Victor Barrera, Director of Economic Development

BACKGROUND/HISTORY:

City Council shall convene in Executive Session pursuant to Section 551.072 of the Texas Government Code, to deliberate the sale, exchange, lease, purchase, or value of certain real property located north of Wheatland, south of Interstate 20, and west of US Highway 67, and, pursuant to Section 551.071 of the Texas Government Code, to seek legal advice from the City Attorney regarding the same.

POLICY EXPLANATION:

City Council shall convene in Executive Session pursuant to Section 551.072 of the Texas Government Code, to deliberate the sale, exchange, lease, purchase, or value of certain real property located north of Wheatland, south of Interstate 20, and west of US Highway 67, and, pursuant to Section 551.071 of the Texas Government Code, to seek legal advice from the City Attorney regarding the same.

FUNDING SOURCE:

ORG and Object Number

N/A

Available Budget

\$0.00

Purchase Amount

\$0.00

After Encumber

\$0.00

ACTION ALTERNATIVES:

1. Take any necessary action as a result of executive session.



STAFF REPORT

MEETING: City Council Joint Meeting w/DCEDC - 30 July 2024

TITLE:

Council and Duncanville Community and Economic Development Board to discuss the status of Wheatland Plaza, including:

- Current progress of the project
- Next Steps
- Co-lab space
- Financials update

Vision Statement:

“Duncanville, a City of Champions, is a safe, vibrant, diverse community committed to excellence in education, business, and good governance.”

STAFF RESPONSIBLE:

Victor Barrera, Director of Economic Development

BACKGROUND/HISTORY:

The City and the Duncanville Community and Economic Development Corporation partnered with Monte Anderson in 2022 to purchase Wheatland Plaza, which had fallen into disrepair. The purchase of the shopping center presented an opportunity for a public/private partnership to improve a blighted and neglected area within walking distance of Downtown Duncanville. Together, the City and the DCEDC contributed \$1.5 million dollars in cash, with an additional \$500,000 placed in a CD and pledged as collateral on the loan to purchase the property.

POLICY EXPLANATION:

Staff and Mr. Anderson will provide an update on the progress of the project and what the future of Wheatland Plaza will be.

FUNDING SOURCE:

ORG and Object Number

N/A

Available Budget

N/A

Purchase Amount

N/A

After Encumber

N/A

ACTION ALTERNATIVES:

1. No action necessary. Discussion only.



STAFF REPORT

MEETING: City Council Joint Meeting w/DCEDC - 30 July 2024

TITLE:

City Council and the Duncanville Community and Economic Development Corporation Board Members to discuss the following:

- status of working together
- Council appointments to the board
- appointing a subcommittee to review bylaws of DCEDC
- general status of the DCEDC as it relates to the DCEDC's mission

Vision Statement:

“Duncanville, a City of Champions, is a safe, vibrant, diverse community committed to excellence in education, business, and good governance.”

STAFF RESPONSIBLE:

Victor Barrera, Director of Economic Development

BACKGROUND/HISTORY:

The DCEDC is an appointed board of the City Council. From Article 5(A) of the DCEDC's articles of Incorporation:

The purpose of the Corporation is to promote economic development within the City and the State of Texas in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City, and for parks and park facilities, municipal buildings (for example library facilities) including maintenance and operating costs of such facilities by developing, implementing, providing, and financing projects under the Act and as defined in Section 4B of the Act.

POLICY EXPLANATION:

The DCEDC's Articles of Incorporation and Bylaws are attached.

FUNDING SOURCE:

ORG and Object Number

N/A

Available Budget

N/A

Purchase Amount

N/A

After Encumber

N/A

ACTION ALTERNATIVES:

1. No action to be taken. Discussion only.

ATTACHMENTS:

[Articles of Incorporation of Duncanville Community and Economic Development Corporation 2023-11-30](#)

[Bylaws of the Duncanville Community and Economic Development Corporation 2023-11-30](#)

**ARTICLES OF INCORPORATION
OF
DUNCANVILLE COMMUNITY AND ECONOMIC DEVELOPMENT
CORPORATION**

WE, THE UNDERSIGNED natural persons, not less than three in number, each of whom is at least 18 years of age and is a qualified elector of the City of Duncanville, Texas (the "City"), acting as incorporators of a public instrumentality and non-profit industrial development corporation (the "Corporation") under the Development Corporation Act of 1979, as amended, Article 5190.6, Vernon's Ann. Civ. Stat., Sect. 4B as amended (the "Act"), with the approval of the City Council, do hereby adopt the following Articles of Incorporation (the "Articles") for the Corporation:

ARTICLE ONE

The name of the Corporation is "Duncanville Community and Economic Development Corporation."

ARTICLE TWO

The Corporation is a non-profit industrial development corporation under the Act and is governed by Section 4B of the Act.

ARTICLE THREE

Subject to the provisions of these Articles, the period of duration of the Corporation is perpetual.

ARTICLE FOUR

The Corporation has no members and is a non-stock corporation.

ARTICLE FIVE

- A. The purpose of the Corporation is to promote economic development within the City and the State of Texas in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City, and for parks and park facilities, municipal buildings (for example library facilities) including maintenance and operating costs of such facilities by developing, implementing, providing, and financing projects under the Act and as defined in Section 4B of the Act.

- B. In the fulfillment of its corporate purpose, the Corporation shall have the power to provide financing to pay the costs of projects through the issuance or execution of bonds, notes, and other forms of debt instruments, and to acquire, maintain, and lease and sell property, and interests therein, all to be done and accomplished on behalf of the City and for its benefit and to accomplish its public and governmental purposes as its duly constituted authority and public instrumentality pursuant to the Act and under and within the meaning of, the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Treasury Department and the rulings of the Internal Revenue Service of the United States prescribed and promulgated thereunder.
- C. In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in these Articles, together with all the other powers granted to corporations that are incorporated under the Act and that are governed by Section 4B thereof, and, to the extent not in conflict with the Act, the Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State of Texas to nonprofit corporations under the Texas Non-Profit Corporation Act, as amended, Article 1396-1.01, et seq, Vernon's Ann. Civ. Stat., as amended.
- D. The Corporation is a corporation having the purposes and powers permitted by the Act pursuant to the authority granted in Article III, Section 52-a of the Texas Constitution, but the Corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax (except for the power to receive and use the sales and use taxes specified in Section 4B of the Act) and the police power, except that the Corporation shall have and may exercise the power of eminent domain when the exercise thereof is approved by the City Council. The Corporation, directors of the Corporation, the City creating the Corporation, members of the governing body of the City, employees of the Corporation and employees of the City shall not be and are not liable for damages arising from the performance of any governmental function of the Corporation or City. For purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code), the Corporation is a governmental unit and its actions are governmental functions.
- E. No bonds, notes, or other debt instruments or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, notes, or other debt instruments or other obligations, or the lending of a credit, or a grant of the public money or things of value, of, belonging to, or by the State of Texas, the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, bonds, notes and other debt instruments and other obligations, contracts and agreements shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by Section 4B of the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.

ARTICLE SIX

These Articles shall be amended in either one of the following methods:

- A. Pursuant to the powers of the City contained in 17(b) of the Act, the City Council, by resolution, may amend these Articles by filing amendments hereto with the Secretary of State as provided by the Act.
- B. The Board of Directors (the "Board") of the Corporation may file a written application with the City Council requesting approval of proposed amendments to these Articles of Incorporation specifying in such application the proposed amendments. If the City Council, by appropriate resolution, finds and determines that it is advisable that the proposed amendments be made, authorizes the same to be made, and approves the form of the proposed amendments, the Board of Directors of the Corporation may proceed to amend these Articles of Incorporation in the manner provided by the Act.
- C. The Board of Directors of the Corporation shall not have any power to amend these Articles of Incorporation except in accordance with the procedures established in these Articles.

ARTICLE SEVEN

The address of the initial registered office of the Corporation is City Hall, 203 E. Wheatland Road, Duncanville, Texas, 75116, and the name of its initial registered agent at such address is Dan Savage, City Manager. This address shall also serve as the principal address of the Board.

ARTICLE EIGHT

The affairs of the Corporation shall be managed by a Board of Directors (the "directors") which shall be composed of seven (7) persons appointed by the City Council. Each of the directors shall be a resident of the City. No more than four (4) members of the Board shall be members of the City Council, officials of the City, or City employees. The names and street address of the persons who are to serve as the initial directors are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>	<u>Date of Expiration of Term</u>
Russ Kent	218 Willow Wood Pl., Duncanville, Tx 75116	1997
Grady Smithy, Jr.	1806 Cedar Hill Rd., Duncanville, Tx 75137	1997
Dan Pickering	1011 Lansdale Dr., Duncanville, Tx 75116	1997
David Malone	511 Longworth Blvd., Duncanville, Tx 75116	1997
Don Boldt	215 Meadowlark Lane, Duncanville, Tx 75137	1996
Janice Savage	1003 Briar Hill Cr., Duncanville, TX 75137	1996
Ronald Malippa	2150 Blue Ridge Dr., Duncanville, Tx 75137	1996

Each director shall hold office for the term for which the director is appointed unless sooner removed or resigned. Each director, including the initial directors, shall be eligible for reappointment. Directors are removable by the City Council at will and shall be appointed for a term of two (2) years. If a director is a member of the City Council and ceases to be a member of such, such event shall constitute an automatic resignation as a director and such vacancy shall be filled in the same manner as for other vacancies.

Any vacancy of a director position occurring through death, resignation or otherwise shall be filled by appointment by the City Council, as provided by the Corporation's Bylaws, to hold office until the expiration of the vacating member's term.

ARTICLE NINE

The name and street address of each incorporator are:

<u>NAME</u>	<u>ADDRESS</u>
Ed Purcell, Mayor	103 Willowbrook Dr., Duncanville, Tx 75116
Dan Savage, City Manager	203 E. Wheatland Rd., Duncanville, Tx 75116
Larry Shaw, Asst. City Mgr.	203 E. Wheatland Rd., Duncanville, Tx 75116

- A. The initial bylaws of the Corporation shall be in the form and substance approved by the City Council in its Resolution No. 95-041708 approving these Articles of Incorporation. Such bylaws shall be adopted by the Corporation's Board of Directors and shall, together with these Articles of Incorporation govern the internal affairs of the Corporation until or unless amended in accordance with these Articles.
- B. Neither the initial bylaws nor any subsequently effective bylaws of the Corporation may be amended without the consent and approval of the City Council. The Board of Directors of the Corporation shall make application to the City Council for the approval of any proposed amendments, but the same shall not become effective until or unless the same shall be approved by resolution adopted by the City Council.

ARTICLE TEN

- A. The City Council may, in its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation, and it may terminate or dissolve the Corporation, subject to the provisions of these Articles.
- B. The Corporation shall not be dissolved, and its business shall not be terminated, by act of the City Council, election by the voters as prescribed by the Act, or otherwise, so long as the Corporation shall be obligated to pay any bonds, notes, or other obligations and unless the collection of the sales and use tax authorized by Section 4B of the Act is eligible for termination in accordance with the provisions of Section 4B of the Act.

- C. No action shall be taken in any manner or at any time that would impair any contract, lease, right, or other obligation theretofore executed, granted, or incurred by the Corporation.

ARTICLE ELEVEN

- A. No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses and other obligations shall be distributed to or inure to the benefit of its directors or officers, or any individual, private firm, or private corporation or association.
- B. If, after the close of any fiscal year, the board of directors shall determine that sufficient provision has been made for the full payment of all current expenses, together with all amounts payable on the contracts, agreements, bonds, notes, and other obligations of the Corporation, and that all of the terms, provisions, and covenants therein have been met, then any net earnings derived from sources other than the sales and use taxes collected for the account of Corporation pursuant to Section 4B of the Act thereafter accruing and lease payments received in connection with projects financed pursuant to Section 4B of the Act shall be paid to the City. All sales and use taxes collected for the account of the Corporation pursuant to Section 4B of the Act, and lease payments received in connection with projects financed pursuant to Section 4B of the Act shall be used solely for the purposes permitted by Section 4B of the Act.
- C. If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of all debts, claims, and contractual obligations, including any contractual obligations granting rights of purchase of property of the Corporation.
- D. No part of the Corporation's activities shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign of or in opposition to any candidate for public office

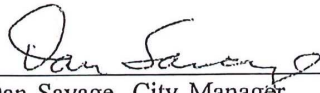
ARTICLE TWELVE

The City has specifically authorized the Corporation by Resolution No. 95-041708 to act on its behalf to further the public purposes stated in said Resolution and in these Articles of Incorporation and the City has by said Resolution approved these Articles of Incorporation. A copy of said Resolution is on file among the permanent public records of the City and the Corporation.

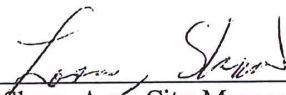
INCORPORATORS:



Ed Purcell, Mayor



Dan Savage, City Manager



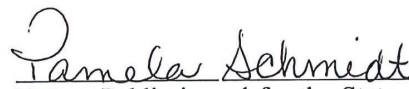
Larry Shaw, Asst. City Manager

STATE OF TEXAS

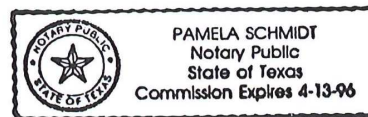
COUNTY OF DALLAS

I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on this 18th day of April, 1995, personally appeared before me Ed Purcell, Mayor, Dan Savage, City Manager, and Larry Shaw, Asst. City Manager, who, each being by me first sworn, severally declared that they are the persons who signed the foregoing documents as incorporators, and that the statements therein contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.



Notary Public in and for the State of Texas



**BYLAWS OF THE
DUNCANVILLE COMMUNITY AND ECONOMIC DEVELOPMENT
CORPORATION**

**ARTICLE I
PURPOSE AND POWERS**

SECTION 1. REGISTERED OFFICE AND REGISTERED AGENT.

The Duncanville Community and Economic Development Corporation (the "Corporation") shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act., and state law. The Registered Agent for the Corporation shall be the City Manager, subject that the Board of Directors (the "Board") from time to time, may change the registered agent and/or the address of the registered office, subject to City Council approval, provided that such change is appropriately reflected in these Bylaws and in the Articles of Incorporation (the "Articles").

The registered office of the Corporation is located at 203 E. Wheatland Road, Duncanville, Dallas County, Texas 75116, and at such address is the Corporation, whose mailing address is P.O. Box 380280, Duncanville, Texas, 75138. Said address shall also serve as the principal office of the Corporation and Board.

SECTION 2. PURPOSE.

The Corporation is incorporated as a non-profit corporation for the purposes set forth in the Articles the same to be accomplished on behalf of the City of Duncanville, Texas (the "City") as its duly constituted authority and instrumentality in accordance with the Texas Development Corporation Act of 1979, Article 5190.6, Section 4B Tex. Rev. Civ. Stat., Ann., as amended, (the "Act"), other applicable laws, and City of Duncanville Resolution No. 95-041708, including all permissible projects prescribed by the Act, and for parks and park facilities, municipal buildings (for example library facilities), including maintenance and operating costs of such facilities, for the promotion and expansion of manufacturing and industrial facilities, and other economic development purposes. The Corporation shall be a non-profit corporation as defined by the Internal Revenue Code 1986, as amended, and the applicable regulations of the United States Treasury Department and the rulings of the Internal Revenue Service of the United States prescribed and promulgated thereunder.

SECTION 3. POWERS.

In the fulfillment of its corporate purpose, the Corporation shall be governed by Section 4B of the Act, and shall have all of the powers set forth and conferred in the Act, and in other applicable laws, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

ARTICLE II
BOARD OF DIRECTORS

SECTION 1. NUMBER OF TERM OF OFFICE.

- A. The property and affairs of the Corporation shall be managed and controlled by a Board and, subject to the restrictions imposed by law, by the Articles and these Bylaws, the Board shall exercise all of the powers of the Corporation.
- B. The Board shall consist of seven (7) directors, each of whom shall be appointed by the City Council. Each of the directors shall be a resident of the City.
- C. Four (4) members of the first Board shall serve terms of two (2) years and three (3) members shall serve terms of one (1) year. The respective terms of the initial directors shall be determined by the City Council. Thereafter, each successive member of the Board shall be appointed and serve for two (2) years or until a successor is appointed as hereinafter provided. Three (3) directors shall be persons who are not employees, officers of the City or members of the City Council.
- D. Any director may be removed from office by the City Council at will. A vacancy of any director's position, which occurs by reason of death, resignation, disqualification, removal, or otherwise, shall be filled by the City Council.

SECTION 2. VACANCIES AND RESIGNATIONS.

A vacancy in any position of director which occurs by reason of death, resignation, disqualification, removal, or otherwise, shall be filled as prescribed in Article II, Section 1. A vacancy in the office of President or Vice President which occurs by reason of death, resignation, disqualification, removal, or otherwise, shall be filled by election by the Board, from the remaining directors, for the unexpired portion of the term of that office.

Any director may resign at any time. Such resignation shall be made in writing, addressed to the Mayor and the City Secretary, and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the City Secretary.

SECTION 3. MEETINGS OF DIRECTORS.

For meetings of the Board or committees, notice thereof shall be provided and set forth in accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Local Government Code. Any member of the Board, officers of the Corporation or Mayor, may have an item placed on the agenda by delivering the same in writing to the Secretary of the Board no less than three (3) calendar days prior to the date of the Board meeting. Each agenda of a Board meeting shall contain an item, titled "Citizens Forum", to allow public comment to be made by the general public concerning Board related matters. However, no official or formal action or vote may be taken on any comment made by citizens during Citizens Forum.

The annual meeting of the Board shall be in June of each year, at 6:00 p.m. The Board shall hold regular and special meetings, in the corporate limits of the City, at such place or places as the Board may from time to time determine, and in conformance with the Texas Open Meetings Act.

SECTION 4. QUORUM.

A quorum is a majority of the Board, being not less than four (4) members, and shall be present for the conduct of the official business of the Corporation. The Act of four (4) or more directors at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation, unless the act of a greater number is required by these Bylaws, policies/procedures of the Board, City Council resolution/ordinance, or state law.

SECTION 5. CONDUCT OF BUSINESS.

- A. At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with the rules of procedure as from time to time prescribed by the Board. Unless otherwise adopted by the Board, the rules of procedures of the City Council shall be the rules of procedures for the Board.
- B. At all meetings of the Board, the President shall preside, and in the absence of the President, the Vice President shall exercise the powers of the President.
- C. The Secretary of the Corporation shall act as Secretary of all meetings of the Corporation, but in the absence of the Secretary, the presiding officer may appoint any person to act as Secretary of the meeting. The Secretary shall keep minutes of the transactions of the Board and committee meetings and shall cause such official minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

SECTION 6. COMMITTEES OF THE BOARD.

An official committee of the Board shall consist of two (2) or more directors. It is provided, however, that all final official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

SECTION 7. COMPENSATION OF DIRECTORS.

The directors, including the President and Vice President, shall not receive any salary or compensation for their services. However, directors may be reimbursed for their actual expenses incurred in the performance of their duties hereunder, including but not limited to the cost of travel, lodging and incidental expenses reasonably related to the corporate duties of the Board. Travel expenses incurred by directors for both regular and special meetings are not eligible for reimbursement.

ARTICLE III OFFICERS

SECTION 1. TITLES AND TERM OF OFFICE.

The President and Vice President shall be elected by the Board and shall serve a term of one (1) year. The respective terms of the initial President and Vice President shall be determined by the City Council. The President and Vice President shall continue to serve until their successors are appointed as provided in Article II, Section 1.

SECTION 2. POWERS AND DUTIES OF THE PRESIDENT.

The President shall be the chief executive officer of the Corporation, and shall, subject to the authority of the Board and paramount authority and approval of the City Council, preside at all meetings of the Board, and absent any different designation by a majority of the Board, shall sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, and notes in the name of the Corporation. In addition, the President shall:

- A. call both regular and special meetings of the Board and establish the agenda for such;
- B. have the right to vote on all matters coming before the Board;
- C. have the authority to appoint standing or study committees to aid and assist the Board in its business undertaking or other matters incidental to the operation and functions of the Board;
- D. perform all duties incident to the office, and such other duties as shall be prescribed from time to time by the Board, subject to approval by the City Council;
- E. appear before the City Council on a periodic basis to give a report on the status of activities of the Corporation; and
- F. appear before the City Council, or be represented by his designee, regarding any item being considered by the City Council concerning the Corporation.

SECTION 3. VICE PRESIDENT.

The Vice President shall exercise the powers of the President during that officer's absence or inability to act. The Vice President shall also perform other duties as from time to time may be assigned by the President or the Board.

SECTION 4. ATTENDANCE.

Directors must be present in order to vote at any meeting. Regular attendance at the Board meetings is required of all directors. The following number of absences shall constitute the basis for replacement of a director. Three (3) consecutive unexcused absences from meetings of the Board shall cause the position to be considered vacant. In addition, the position of any

director who has four (4) unexcused absences in a twelve (12) month period shall be considered vacant.

SECTION 5. CONFLICT OF INTEREST.

In the event that a director is aware that he has a conflict of interest or potential conflict of interest, with regard to any particular matter or vote coming before the Board, the director shall bring the same to the attention of the Board and shall abstain from discussion and voting thereof.

Any director shall bring to the attention of the Board any apparent conflict of interest or potential conflict of interest of any other director, in which case the Board shall determine whether a true conflict of interest exists before any further discussion or vote shall be conducted regarding that particular matter. The director about whom a conflict of interest question has been raised shall refrain from voting with regard to the determination as to whether a true conflict exists. Failure to conform to these requirements herein and policies as may be adopted by the Board is cause for dismissal from the Board by action of the City Council.

SECTION 6. IMPLIED DUTIES.

The Corporation is authorized to do that which the Board deems desirable, subject to City Council approval, to accomplish any of the purposes or duties set out or alluded to in the Articles, these Bylaws, and in accordance with State Law.

SECTION 7. BOARD'S RELATIONSHIP WITH THE CITY.

In acceptance with state law, the Board shall be responsible for the proper discharge of its duties assigned herein. The Board shall determine its policies and directives within the limitations of the duties herein imposed by applicable laws, the Articles, these Bylaws, contracts entered into with the City, and budget and fiduciary responsibilities. Such policies and directives are subject to approval by the City Council. Any request for services made to the departments of the City shall be made by the Board or its designee in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he finds such requested services are available within the City and that the Board has agreed to reimburse the City for the cost of such services so provided, as provided in Article III, Section 8 of these Bylaws.

SECTION 8. CONTRACTS FOR SERVICE.

The Corporation may, with approval of the City Council, contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks which will aid or assist the Board in the performance of its duties. However, no such contract shall ever be approved or entered into which seeks or attempts to divest the Board of its discretion and policy-making functions in discharging the duties herein set forth. An administrative services agreement shall be executed between the Board and the City Council for the services provided and compensated as provided for herein.

Subject to the authority of the City Manager under the Charter of the City, the Corporation shall have the right to utilize the services of the staff and employees of the Finance Department of the City, the staff and employees of the Parks and Recreation Department and other employees of the City, provided (i) that the City Manager approves of the utilization of such services, (ii) that the Corporation shall pay, as approved by the City Manager, reasonable compensation to the City of such services, and (iii) the performance of such services does not materially interfere with the other duties of such personnel of the City. Utilization of the aforesaid City staff shall be solely by an agreement approved by the City Council.

ARTICLE IV FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

SECTION 1. CHIEF ADMINISTRATIVE OFFICER

The City Manager or his designee shall be the chief administrative officer of the Corporation and be in general charge of the properties and affairs of the Corporation, shall administer all work orders, requisitions for payment, purchase orders, contract administration/oversight, and other and other instruments or activities as prescribed by the Board in the name of the Corporation.

The City Manager shall employ such full or part-time employees as needed to carry out the programs of the Board. These employees shall be employees of the City and perform those duties as are assigned to them. These employees shall be compensated as prescribed in Article III, Section 8 of these Bylaws. The City Manager shall have the authority, and subject to provisions of the City Charter and policies-procedures of the City, to hire, fire, direct, and control the work, as functionally appropriate, of such employees.

The City Manager or his designee shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation. When necessary or proper, the City Manager shall endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes and other obligations drawn upon such bank or banks or depositories as shall be designated by the City Council consistent with these Bylaws. The City Manager shall see to the entry in the books of the Corporation of full and accurate accounts of all monies received and paid out on account of the Corporation. The City Manager shall, at the expense of the Corporation, give such bond for the faithful discharge of the duties in such form and amount as the City Council shall require, by resolution. The City Manager shall submit a monthly report to the Board, in sufficient detail, of all checks or drafts issued on behalf of the Corporation for the previous month.

SECTION 2. SECRETARY.

The Secretary shall keep the minutes of all meetings of the Board and committees in books provided for that purpose, shall give and serve all notices, shall sign with the President in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; shall have charge of the corporate books, records, documents and instruments except the books of account and financial records and securities, and such other books and

papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of Secretary subject to the control of the Board. The Secretary shall endorse and countersign, on behalf of the Corporation, for collection or issuance, checks, notes and other obligations in or drawn upon such bank or banks or depositories as shall be designated by the City Council consistent with these Bylaws. The Secretary shall be an employee of the City.

SECTION 3. EX-OFFICIO MEMBERS.

The City Council may appoint Ex-Officio members to the Board of Directors as it deems appropriate. These representatives shall have the right to take part in any discussion of open meetings, but shall not have the power to vote in the meetings. Ex-Officio members shall serve a term of one year.

Ex-Officio members shall be required to take an Oath of Office and abide by, and be subject to, the City Code of Ethics.

SECTION 4. PARTICIPATION IN BOARD MEETINGS.

The City Manager, Secretary, Mayor and Councilmembers, shall have the right to take part in any discussion of the Board, or committees thereof, including attendance of executive sessions, but shall not have the power to vote in any meetings attended.

SECTION 5. DUTIES OF THE BOARD.

The Board shall develop a combined Community Enhancement Program, (the "CEP"), including maintenance and operation costs thereof, for the City which shall include and set forth short and long term goals. Such plan shall be approved by the City Council. The CEP developed by the Board shall be one that incorporates the Capital Improvement Plans of the City Parks and Recreation Department, and the Public Library, and the promotion and expansion of manufacturing and industrial facilities, other economic development purposes, and other similarly related community development needs within the financial constraints of revenues available to the Corporation. The Board shall conduct a public hearing concerning both the adoption and required annual updates to the CEP. A legal notice shall be advertised as determined by the Board, at least three (3) days prior to the scheduled public meeting or seven (7) days prior to a Public Hearing.

The Board shall review and update the CEP once a year to ensure the plan is up to date with current community needs and is capable of meeting Duncanville's community enhancement needs. The Board shall expend, in accordance with State law and subject to City Council approval, the funds received by it for community enhancement where such expenditures will have a benefit to the citizens of Duncanville. The Board shall make an *annual report to the City Council including, but not limited to the following:

- A. A review of the accomplishments of the Board in the area of community enhancement; and

- B. The activities of the Board for the budget year addressed in the annual report, together with any proposed change in the activity as it may relate to community enhancement.

* The required annual report shall be made to the City Council no later than March 1st of each year.

The Board shall be accountable to the City Council for all activities undertaken by it or on its behalf, and shall report on all activities of the Board, whether discharged directly by the Board or by any person, firm, corporation, agency, association or other entity on behalf of the Board.

SECTION 6. COMPONENTS OF THE CEP.

The Board shall submit to the City Council for its approval, the CEP which shall include proposed methods and the expected costs of implementation, and cost of operations and maintenance of the projects. The plan shall include both short and long term goals for the enhancement of the City.

SECTION 7. ANNUAL CORPORATE BUDGET.

At least ninety (90) days prior to October 1st, the Board shall prepare and adopt a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The fiscal year of the corporation shall commence on October 1st of each year and end on September 30. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget proposed for adoption shall include the projected operating expenses, and such other budgetary information as shall be required by the City Council for its approval and adoption. The budget shall be considered adopted upon formal approval by the City Council.

SECTION 8. FINANCIAL BOOKS, RECORDS, AUDITS.

The City Manager or his designee shall keep and properly maintain, in accordance with generally accepted accounting principles, complete financial books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

The City shall cause the Corporation's financial books, records, accounts, and financial statements to be audited at least once each year by an outside, independent auditing and accounting firm selected by the City Council. Such audit shall be at the expense of the Corporation.

SECTION 9. DEBT, DEPOSIT AND INVESTMENT OF CORPORATE FUNDS.

All proceeds from the issuance of bonds, notes or other debt instruments (the "Bonds") issued by the Corporation shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their execution or issuance and handled in accordance with the statute governing this Corporation, but no bonds shall be issued, including refunding bonds, by the Corporation without the approval of the City Council after review and comment by the City's bond counsel and financial advisor.

All monies of the Corporation shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City, as authorized by the City Investment Policy. The City Manager shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of the City Manager and the Secretary. The accounts, reconciliation, and investment of such funds and accounts shall be performed by the Department of Finance of the City. The Corporation shall pay reasonable compensation for such services as prescribed in Article III, Section B, of these Bylaws.

SECTION 10. EXPENDITURES OF CORPORATE MONEY.

The monies of the Corporation, including sales and use taxes collected pursuant to the Act, the proceeds from the investment of funds of the Corporation, the proceeds from the sale of property, monies derived from the repayment of loans, rents received from the lease or use of property, the proceeds derived from the sale of bonds, and other proceeds may be expended by the Corporation for any of the purposes authorized by the Act, subject to the following limitations:

- A. Expenditures from the proceeds of bonds shall be identified and described in the orders, resolutions, indentures, or other agreements submitted to and approved by the City Council.
- B. Expenditures that may be made from a fund created from the proceeds of bonds, and expenditures of monies derived from sources other than the proceeds of bonds may be used for the purposes of financing or otherwise providing one or more projects, as defined in the Act. The specific expenditures shall be described in a resolution or order of the Board and shall be made only after the approval thereof by the City Council.
- C. All other proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required by these Bylaws or in contracts meeting the requirements of the Article.

No bonds, including refunding bonds, shall be authorized or sold and delivered by the Corporation unless the City Council shall approve such bonds.

SECTION 11. CONTRACTS.

As provided herein, the President and Secretary shall enter into any contracts or other instruments which the Board has approved and authorized in the name and on behalf of the Corporation. Such authority may be confined to specific instances or defined in general terms. When appropriate, the Board may grant a specific or general power of attorney to carry out some action on behalf of the Board, provided, however that no such power of attorney may be granted unless an appropriate resolution of the Board authorizes the same to be done.

ARTICLE V
MISCELLANEOUS PROVISIONS

SECTION 1. SEAL.

The Board may obtain a corporate seal which shall bear the words "Corporate Seal of the Duncanville Community and Economic Development Corporation" and the Board may thereafter use the corporate seal and corporate name; but these Bylaws shall not be construed to require the use of the corporate seal.

SECTION 2. APPROVAL OR ADVISE AND CONSENT OF THE CITY COUNCIL.

To the extent that these bylaws refer to any action, approval, advice, or consent by the City or refer to action, approval, advice or consent by the City Council, such action, approval, advice or consent shall be evidenced by a motion, resolution or ordinance duly passed by the City Council and reflected in the minutes of the City Council.

SECTION 3. INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES.

As provided in the Act and in the Articles of Incorporation, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions. The Corporation shall indemnify each and every member of the Board, its officers and its employees, and each member of the City Council and each employee of the City, to the fullest extent permitted by law against any and all liability or expense, including attorneys fees, incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the Corporation. This indemnity shall apply even if one or more of those to be indemnified was negligent or caused or contributed to cause any loss, claim, action or suit. Specifically, it is the intent of these Bylaws and the Corporation to require the Corporation to indemnify those named for indemnification, even for the consequences of the negligence of those to be indemnified which caused or contributed to cause any liability.

The Corporation must purchase and maintain insurance on behalf of any director, officer, employee, or agent of the Corporation, or on behalf of any person serving at the request of the Corporation as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against that person and incurred by that person in any such capacity or arising out of any such status with regard to the Corporation, whether or not the Corporation has the power to indemnify that person against liability for any of those acts.

SECTION 4. GIFTS.

The Board may accept on behalf of the Corporation any contribution, gift, bequest, or device for the general purpose or for any special purposes of the Corporation.

SECTION 5. CODE OF ETHICS.

Each director, including the President and Vice president, its officers, employees, and agents shall abide by and be subject to the City Code of Ethics. The Code of Ethics shall be applicable to independent contractors of the Corporation, except to the extent that such independent contractor is not performing work on behalf of the Corporation.

SECTION 6. AMENDMENTS TO BYLAWS.

These Bylaws may be amended or repealed and new Bylaws may be adopted by an affirmative vote of four (4) of the authorized directors serving on the Board, subject to approval by the City Council. The City Council may amend these Bylaws at any time. Such amendments by the City Council will be duly passed and adopted by motion, resolution or ordinance duly reflected in the minutes of the City Council and, thereafter, duly noted to the Board.

SECTION 7. DISSOLUTION OF THE CORPORATION.

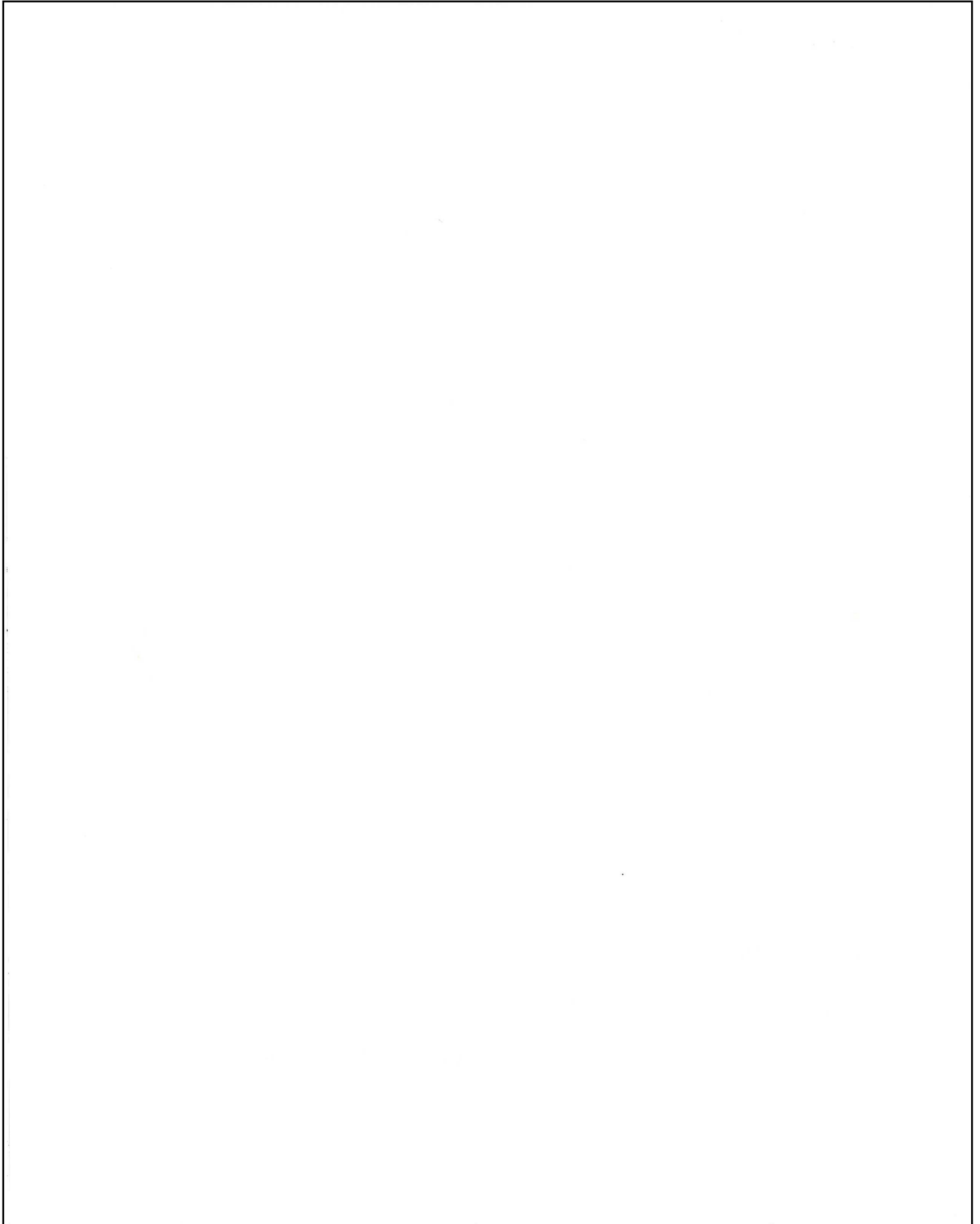
Upon dissolution of the Corporation, titles to or other interest in any real or personal property owned by the Corporation at such time shall vest in the City of Duncanville.

SECTION 8. APPLICABILITY OF CITY CHARTER, POLICIES AND PROCEDURES.

The City Charter and all duly approved city policies and procedures shall apply directly to the Corporation and the Board unless such charters, policies or procedures are superseded by state law or not related to the functions of the Board. The Board has the prerogative, subject to the approval by the City Council, to adopt other policies and procedures in addition to or in place of those of the City.

SECTION 9. EFFECTIVE DATE.

These Bylaws, having been approved by Resolution No. 95-041708 shall become effective upon the approval of such by the Board.





STAFF REPORT

MEETING: City Council Joint Meeting w/DCEDC - 30 July 2024

TITLE:

Consider a resolution approving a professional services agreement with MRB Group to provide an update to the City's Comprehensive Plan and authorizing the City Manager to sign and execute all documents associated with the agreement.

Vision Statement:

“Duncanville, a City of Champions, is a safe, vibrant, diverse community committed to excellence in education, business, and good governance.”

STAFF RESPONSIBLE:

David Kees, Assistant to the City Manager

BACKGROUND/HISTORY:

A request for proposals was issued for updates to the City's Comprehensive Plan. Eight proposals in all were received, and three firms were invited to give presentations on June 14. Councilmembers Gooden, Cherry-Brown, and Pennebaker, serving as representatives of the Comprehensive Plan Committee, evaluated the firms based on their presentations. MRB Group was selected as the firm to perform the update, and they have provided the city with a proposal.

POLICY EXPLANATION:

MRB's proposal includes significant time spent engaging the community. Additionally, at the conclusion of providing the update, MRB will provide the City with a list of action items to begin executing the plan. The DCEDC will be asked to consider funding the MRB's proposal.

FUNDING SOURCE:

ORG and Object Number

12011000 (Economic Development) - 700450 (Contractual Services)

Available Budget

TBD

Purchase Amount

\$158,250

After Encumber

TBD

ACTION ALTERNATIVES:

1. Do not approve the agreement.
2. Other actions as directed by Council.

ATTACHMENTS:

[Resolution No. - 2024-296 - Comprehensive Plan - MRB Group](#)

[C. Duncanville - CompPlan Scope and Fee \(6-28-2024\)](#)

RESOLUTION NO. 2024-296

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MRB GROUP TO UPDATE THE CITY'S COMPREHENSIVE PLAN; AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City last updated its Comprehensive Plan in 2017; and,

WHEREAS, the City Council desires to update its Comprehensive Plan to provide a blueprint for future economic growth, residential development, and public amenities; and,

WHEREAS, MRB Group has been identified as the firm whose proposal most aligns with the goals of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, THAT:

SECTION 1. A Professional Services Agreement with MRG Group to update the City's Comprehensive Plan, attached hereto as "Exhibit A," is hereby approved; and

SECTION 2. The City Manager is hereby authorized to execute the necessary documents related to said agreement.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this agreement be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this agreement as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional.

SECTION 4. That this Resolution shall take effect immediately from and after its passage and the publication of the caption of said Resolution, as the law in such cases provides.

DULY RESOLVED AND ADOPTED by the City Council of the City of
Duncanville, Texas, on the 30th day of July, 2024.

APPROVED:

Greg Contreras, Mayor

ATTEST:

Chiquita Taylor, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Exhibit A



PROFESSIONAL SERVICES CONTRACT
NUMBER 24-14620
(COMPREHENSIVE PLAN and ECONOMIC DEVELOPMENT STRATEGY)

This **PROFESSIONAL SERVICES CONTRACT** ("contract") is made and entered into by and between **(MRB Group, P.C.)**, hereinafter referred to as "CONSULTANT," which is legally authorized to do business in the State of Texas, and the **City of Duncanville** ("CITY"), a Texas home rule municipal corporation, hereinafter referred to as "CITY," to be effective upon approval of the Duncanville City Council and subsequent execution of this Contract by the Duncanville City Manager or his duly authorized designee.

RECITALS

WHEREAS, the CITY desires CONSULTANT to perform certain professional services set forth in Section 1, Scope of Services, and **Exhibit A, Scope of Services, Deliverables, and Schedule**, of this contract; and

WHEREAS, the CONSULTANT has expressed a willingness to perform said professional services, hereinafter referred to only as "services", specified in said Scope of Services and enumerated under Section 1 and **Exhibit A** of this contract; and

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, the CITY and the CONSULTANT agree as follows:

Section 1. Services to be Provided.

Upon issuance of a written Notice to Proceed or a Purchase Order by CITY, CONSULTANT agrees to provide to CITY the applicable professional services, as set forth in the "Scope of Services, Deliverables, and Schedule," "Scope," **Exhibit A** and incorporated herein. **Exhibit A** also includes the Schedule of Standard Fees. **SCHEDULE:** The proposed services shall begin within **ten (10) working days of authorization to proceed, or upon date as mutually agreed to by City and Contractor and incorporated into the project schedule.** The deliverables and schedule are included as **Exhibit A** and made a part hereto.

Section 2. Term of Contract

The term of this contract shall begin on the last date of execution or approval from the Duncanville City Council hereof (the "Effective Date") and shall continue until CONSULTANT completes the services and obligations required herein to the satisfaction of CITY as specified in **Section 1** and **Exhibit A**, unless sooner terminated as provided in Section 9, Termination, as detailed in this Contract.

Section 3. Contractor Obligations

CONSULTANT shall devote such time as reasonably necessary for the performance of the services under this Contract, as described in the Scope of Services, attached, and incorporated herein as **Exhibit A**. Should CITY require additional services not included under this Contract, CONSULTANT upon receipt of written change order, shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed

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Exhibit A



by CITY; and without decreasing the effectiveness of the performance of services required under this Contract.

A. To the extent reasonably necessary for CONSULTANT to perform the services under this Contract, CONSULTANT shall be authorized to engage the services of any agents, assistants, persons, or corporations that CONSULTANT may deem proper to aid or assist in the performance of the services under this Contract with the prior written approval of CITY. The cost of such personnel and assistance shall be a reimbursable expense to CONSULTANT only if authorized in writing in advance by CITY.

B. CONSULTANT shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation, services, and management necessary to perform all services as set forth in the Scope of Services including to the agreed upon schedule.

Section 4. Invoices

A. The CONSULTANT shall submit monthly invoices for services completed. Each purchase order issued Invoices shall be emailed to the CITY's Accounts Payable Department at accountspayable@duncanville.com with a proforma copy to the City's designated project manager or departmental point-of-contact. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The CONSULTANT agrees that there shall be no additional charges, surcharges, or penalties to the CITY for payments made by credit card or electronic funds transfer.

B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master contract number, if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The CONSULTANT's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the CITY. Unless otherwise instructed in writing, the CITY may rely on the remittance address specified on the CONSULTANT's invoice.

C. Invoices for labor performed outside of the scope but previously agreed to by the City with a written change order, shall be listed on the monthly invoice as a separate item. Invoices for labor shall include a copy of applicable timesheets with labor rate and deliverables clearly identified. Invoices shall also include a tabulation of work hours at the appropriate rates and grouped accordingly. Time billed for labor shall be limited to hours actually worked.

D. Unless otherwise expressly authorized in the Contract, the CONSULTANT shall pass through all Subcontractor and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or CITY sales taxes shall not be included in the invoiced amount. The CITY will furnish a tax exemption certificate upon request.

Section 5. Payment

The total CONSULTANT fee shall be as specified in Exhibit A and in Section 5. The total amount of the invoices on the project shall not exceed the contract amount of **\$158,250.00 One Hundred and Fifty-Eight Thousand, and two hundred and fifty dollars and no cents** for all

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Exhibit A



services authorized in writing and properly performed by CONSULTANT in accordance with the Payment Schedule set forth in this Section, unless amended in writing by the City. All fees paid to CONSULTANT, by CITY, shall be based on invoices submitted by CONSULTANT for services performed and approved by the CITY. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds (EFT). The CONSULTANT agrees that there shall be no additional charges, surcharges, or penalties to the CITY for payments made by credit card or electronic funds transfer. CITY agrees to pay:

Project Schedule Comprehensive Plan:

Proposed Project Start Date	August 1, 2024
1. Development of a Project Management Framework	Delivery: 2 Weeks
2. Facilitation of Ten Monthly Meetings	Delivery: Monthly for 40 Weeks
3. Develop and Execute Public Engagement Plan	Delivery: Monthly for 40 Weeks
4. Develop Existing Conditions Report	Delivery: 16 Weeks
5. Creation of Vision Statement	Delivery: 26 Weeks
6. Develop 4-6 Policy Priorities	Delivery: 34 Weeks
7. Develop future Land Use Plan	Delivery: 34 Weeks
8. Develop 5-year implementation framework	Delivery: 40 Weeks
9. Final Presentation to City Council to Adopt	Delivery: 48 Weeks
Total Project Timeline	Delivery: 48 Weeks

Project Schedule Economic Development Strategy:

Proposed Project Start Date	August 1, 2024
1. Create Economic Development Base Report	Delivery: 8 Weeks
2. Interviews with Regional Stakeholders	Delivery: 16 Weeks
3. Inventory of Key Development Sites	Delivery: 20 Weeks
4. Develop Recommended Actions	Delivery: 24 Weeks
5. Meetings with DEDC	Delivery: 26 Weeks
Total Project Timeline	Delivery: 26 Weeks

Comp Plan Payment Schedule (payable monthly on a percent to completion basis):

1. Development of a Project Management Framework	\$ 2,000.00
2. Facilitation of Ten Monthly Meetings	\$ 11,000.00
3. Develop and Execute Public Engagement	\$ 54,000.00
4. Develop Existing Conditions Report	\$ 14,000.00
5. Creation of Vision Statement	\$ 7,000.00
6. Develop 4-6 Policy Priorities	\$ 31,750.00
7. Develop future Land Use Plan	\$ 2,000.00
8. Develop 5-year implementation framework	\$ 8,000.00
9. Final Presentation to City Council to Adopt	\$ 5,000.00
Total Not-to-Exceed Cost	\$ 134,750.00

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pg. 3

Contract 24-14620

Exhibit A



Economic Development Strategy Payment Schedule (payable monthly on a percent to completion basis):

1. Create Economic Development Base Report	\$ 5,000.00
2. Interviews with Regional Stakeholders	\$ 3,500.00
3. Inventory of Key Development Sites	\$ 3,500.00
4. Develop Recommended Actions	\$ 10,000.00
5. Meetings with DEDC	\$ 1,500.00
Total Not-to-Exceed Cost	\$ 23,500.00

Total Not-to-Exceed Cost (Both Projects) \$ 158,250.00

The CITY, following written notice to CONSULTANT, may withhold or set off the entire payment or part of any payment otherwise due the CONSULTANT to such extent as may be necessary on account of:

- a. third party claims, which are not covered by the insurance which the CONSULTANT is required to pay provided the City receives notification of a valid claim or reasonable evidence indicating probable filing of such claims.
- b. failure of the CONSULTANT to pay Subcontractors, or for labor, materials or equipment: damage to the property of the CITY or the CITY's agents, employees, or contractors, which is not covered by insurance required to be provided by the CONSULTANT.
- c. reasonable evidence that the CONSULTANT's obligations will not be completed. within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay.
- failure of the CONSULTANT to submit proper invoices, with all required attachments and supporting documentation; or
- d. failure of the CONSULTANT to comply with any material provision of the Contract or perform the project in a satisfactory manner.
- e. any sums owed to the CITY, for any reason including delinquent taxes.

Payments shall be made within 30 days of receipt of invoice by CITY, unless disputed by the CITY. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

Section 6. Responsibilities

A. THE CONSULTANT shall be responsible for the quality of goods and services furnished by CONSULTANT under this Contract. CONSULTANT shall complete the services with the professional skill and care ordinarily provided by similarly situated professionals in the same or similar locality and under the same or similar circumstances and professional license. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in the services.

B. Neither CITY's review, approval or acceptance of, nor payment for any of the services

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Exhibit A



required under this Contract, shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for direct damages to CITY caused by CONSULTANT's negligent performance of any of its services furnished under this Contract.

C. CITY's rights and remedies under this Contract are as provided by law and allowed by this contract.

Section 7. Time for Performance

A. CONSULTANT shall perform all services as provided for under this Contract in a proper, efficient, and professional manner in accordance with this contract and the CITY's requirements. Such services shall be completed in a timely manner, after receiving a Notification to Proceed from CITY to CONSULTANT.

B. In the event CONSULTANT's performance of this Contract is delayed or interfered with by acts of the CITY or others, CONSULTANT may request an extension of time for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to CONSULTANT, unless CONSULTANT shall have made written request upon CITY for such extension within seventy-two (72) hours after the cause for such extension occurred, and unless CITY and CONSULTANT have agreed in writing upon the allowance of additional time to be made.

Section 8. Documents

A. Upon completion and receipt of payment, final surveys, studies, proposals, applications, drawings, plans, specifications, and other project-related documents, including those in electronic form, prepared by CONSULTANT and its consultants, subcontractor's, agents, representatives, and/or employees in connection with this Contract ("Project Documents") are intended for the use and benefit of CITY. CONSULTANT and its consultants, subcontractor's, agent(s), representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, CITY shall own, have, keep, and retain all the rights, title, and interest in and to all Project Documents, sealed drawings, etc., submitted by the CONSULTANT to the CITY in completion of the stated Deliverables of the agreement, including applicable ownership, common law, statutory, and other reserved rights, including copyrights. The CONSULTANT shall retain ownership and all rights in its standard drawing details, specifications, databases, computer software, and other proprietary property, whether or not protected under the copyright laws of the United States) in and to all Project Documents, whether in draft form or final form, which are produced at CITY's request and in furtherance of this Contract. Project Documents (as well as materials and reports referenced in Section 8(B) herein) ("collectively, "Project Documents") do not include all Intellectual Property Rights (as defined herein) which may be contained in the Project Documents or other deliverables hereunder that were developed by CONSULTANT prior to performance hereunder of independent to this Agreement ("Background Intellectual Property"). CONSULTANT shall

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retain all right, title and interest in and to any Background Intellectual Property. “Intellectual Property Rights” are defined as all intellectual property or other proprietary rights (including without limitation copyrights, patent rights, trade secret rights, rights of reproduction, trademark rights, rights of publicity and the right to secure registrations, renewals, reissues and extensions thereof).

A. CITY shall have the right to publish, disclose, distribute, and otherwise use such deliverables, materials, and reports for those purposes for which they were intended. CITY shall have full authority to authorize CONSULTANT(s), subcontractor’s, sub-subcontractor’s, CITY consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the services or for any other governmental purpose connected with this project. CITY shall be liable, however, for all uses outside of the intended use for this project. All materials and reports prepared by CONSULTANT in connection with this Contract are “works for hire” and shall be the property of CITY. CITY shall have the right to publish, disclose, distribute, and otherwise use Project Documents in accordance with the Engineering Practice Act of the State of Texas (Texas Occupation Code, Chapter 1001, as amended) and/or Texas Occupations Code, Chapter 1051, as amended and applicable. CONSULTANT shall, upon completion of the services and full payment for the CONSULTANT’S services by the CITY, or earlier termination and appropriate compensation as provided by this Contract, provide CITY with reproductions of all materials, reports, and exhibits prepared by CONSULTANT pursuant to this Contract in a TIFF, JPEG or PDF format, and a DXF format in current version of AutoCAD with NAD-83 coordinate format of all such instruments of service to the CITY, as applicable.

B. As may be applicable, all instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs developed specifically for this service by the CONSULTANT, estimates, surveys, other data, or work items, etc.) prepared under this Contract shall be submitted for approval of CITY. All instruments of service shall be professionally sealed as may be required by law or by the CITY.

C. Acceptance and approval of the Project Documents by CITY shall not constitute nor be release of the responsibility and liability of CONSULTANT, its employees, associates, agents and CONSULTANTS for the accuracy or competency of their designs, working drawings and specifications, or other documents and services; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings and specifications, or other documents prepared by CONSULTANT, its employees, CONSULTANT, agents and CONSULTANTS.

Section 9. Termination

CITY may suspend or terminate this Contract for cause or without cause at any time by giving written notice to CONSULTANT. Upon receipt of such notice, CONSULTANT shall immediately discontinue all services, and CONSULTANT will immediately terminate placing orders or entering into contracts for assistance, supplies, facilities, or material in connection with this contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this contract. In the event suspension or termination is without cause, payment to

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CONSULTANT, in accordance with the terms of this Contract, will be made on the basis of goods or services reasonably determined by CITY to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all goods or services to the CITY. Should CITY require a modification of this Contract with CONSULTANT, and in the event CITY and CONSULTANT fail to agree upon a modification to this Contract, CITY shall have the option of terminating this Contract and CONSULTANT's services hereunder at no additional cost other than the payment to CONSULTANT, in accordance with the terms of this Contract, for the goods or services reasonably determined by CITY to be properly performed by CONSULTANT prior to such termination date.

Section 10. Insurance

A. In accordance to the provisions of [Texas Labor Code, Title 5](#), the CONSULTANT shall provide and maintain Workers' Compensation and Employer's Liability Insurance for the protection of the CONSULTANT's employees, as required by law. The CONSULTANT shall also provide and maintain in full force and effect during the term of this Contract, insurance (including, but not limited to, insurance covering the operation of automobiles, trucks and other vehicles) protecting the CONSULTANT and the CITY against liability from damages because of injuries, including death, suffered by any person or persons other than employees of the CONSULTANT, and liability for damages to property, arising from or growing out of the CONSULTANT's operations in connection with the performance of this Contract.

B. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for one (1) person, and not less than One Million Dollars for any individual one (1) occurrence. Insurance covering damages to property shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for any individual one (1) occurrence, and One Million Dollars (\$1,000,000.00) aggregate.

C. The CONSULTANT shall also provide and maintain Professional Liability Insurance coverage to protect the CONSULTANT and the CITY from liability arising out of the negligent performance of professional services, if any, under this Contract. Such coverage shall be in the sum of not less than One Million Dollars (\$1,000,000.00).

A signed Certificate of Insurance, satisfactory to the CITY, showing compliance with the requirements of this Section shall be furnished to the CITY before any services are performed under this Contract to:

CITY of Duncanville
Attn: Chief Procurement Officer
PO Box 380280
Duncanville, TX 75138
(972) 780-5058
purchasing@duncanvilletx.gov

and shall further indicate that each and every policy for liability insurance coverage, as required

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herein, except Workers' Compensation and Professional Liability Insurance includes a "Contractual Liability Coverage" endorsement covering the Contract under Section 10, hereof. Such Certificate of Insurance shall provide for thirty (30) days written notice to CITY prior to the cancellation except 10-day notice of cancellation for non-payment of premium of any insurance referred to therein. On every date of renewal of the required insurance policies, the CONSULTANT shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the CITY. In addition, the CONSULTANT shall within ten (10) business days after written request provide the CITY with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the CITY is a condition precedent to the payment of any amounts due to CONSULTANT by the CITY. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Contract.

All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the CITY.

Section 11. Indemnification for Injury and Performance

CONSULTANT hereby agrees to indemnify and hold harmless the CITY, its officers, agents, and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability, and from and against costs and expenses, including, in part, reimbursement of reasonable attorney fees, in proportion to CONSULTANT'S liability, incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, arising from the negligent act, error, omission of CONSULTANT, its officers, employees, agents or subcontractor's, or anyone else under CONSULTANT's direction and control, and arising out of, occurring in connection with, resulting from or caused by the negligent performance of any services called for by this Contract, or from conditions created by the performance or non-performance of said services.

CONSULTANTCONSULTANTCONSULTANTCONSULTANT shall not have any obligation to indemnify, defend or reimburse Indemnitees for Professional Liability claims arising by reason of the negligence or willful misconduct of Indemnitees.

Section 12. Indemnification for Unemployment Compensation

CONSULTANT agrees that it is an independent CONSULTANT and not an agent of the CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. CONSULTANT further agrees to indemnify and hold CITY harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of CONSULTANT.

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**Section 14. Assignment-Delegation**

The Contract shall be binding upon and ensure to the benefit of the CITY and the CONSULTANT and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the CONSULTANT without the prior written consent of the CITY. Any attempted assignment or delegation by the CONSULTANT shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm, or entity not a party hereto; it being the intention of the parties that there are no third-party beneficiaries to the Contract.

The Vendor shall notify the CITY's Chief Procurement Officer, in writing, of a company name, ownership, or address change for the purpose of maintaining updated CITY records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition contract. Failure to do so may adversely impact future invoice payments.

Section 15. Jurisdiction, Venue, Applicable Laws

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All Parties shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes relating or applicable to services to be performed under this Contract. The laws of the State of Texas shall govern this Contract; and venue for any action concerning this Contract shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the CITY to seek and secure injunctive relief from any competent authority as contemplated herein.

Section 16. Interpretation

The Contract is intended by the parties as a final, complete, and exclusive statement of the terms of their contract. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

Section 17. Dispute Resolution

If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within

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fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such a meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written contract signed by both parties; in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the CITY and the CONSULTANT agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Dallas County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The CITY and the CONSULTANT will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

Section 18. Default

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with the provisions of this Contract as to the failure to commence the services, failure to diligently provide services in the quality or character of the service, failure to provide services in an efficient, timely, and careful manner, failure to provide or use an adequate number or quality of personnel to complete the services, failure to provide adequate equipment, or fail to perform any of the CONSULTANT obligations under this contract, and the failure is not corrected within ten (10) days after written notice by CITY to CONSULTANT, CITY may, at its sole discretion without prejudice to any other right or remedy:

A. Immediately terminate this contract and complete the services in any manner CITY deems acceptable, including engaging the services of other contractors, and shall be relieved of the payment of any further consideration to CONSULTANT except for all services determined by CITY to be satisfactorily completed prior to termination. Payment for services satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may proceed to complete the services in any manner deemed proper by CITY, either by the use of its own forces or by resubletting to others.

B. CITY may, without terminating this Contract or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of CONSULTANT.

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C. Any such act by the CITY shall not be deemed a waiver of any other right or remedy of the CITY.

Section 19. Adjustments in Services

No claims for extra services, additional services, modifications, or changes in the services will be made by CONSULTANT without a written contract with CITY prior to the performance of such services. The Contract can be modified or amended only in writing as signed by both parties. No pre-printed or similar terms on any the CONSULTANT invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

Section 20. Execution becomes Effective.

This Contract will be effective upon execution of the Contract by and between CONSULTANT and CITY.

Section 21. Contract Amendments

This Contract contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Contract which have not been incorporated herein. This Contract may only be modified, amended, supplemented, or waived by a written instrument executed by the parties except as may be otherwise provided therein.

Section 22. Invalidity and Severability

In the event 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 provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 23. Independent CONSULTANT

It is understood and agreed by and between the parties that CONSULTANT in satisfying the conditions of this Contract, is acting independently, and that the CITY assumes no responsibility or liabilities to any third party in connection with CONSULTANT's actions. All services to be performed by CONSULTANT pursuant to this Contract shall be in the capacity of an independent CONSULTANT, and not as an agent or employee of CITY. CONSULTANT shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Contract. There is no intended third-party beneficiary to this Contract.

Section 24. Notice

Any notice required or permitted to be delivered hereunder may be sent by first class email, overnight, and courier to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If to CITY:

City of Duncanville
Attn: Chief Procurement Officer
PO Box 380280

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Duncanville, TX 75138
 (972) 780-5850
purchasing@duncanvilletx.gov

If to PROFESSIONAL:

MRB Group, P.C.
 The Culver Road Armory
 145 Culver Rd #160,
 Rochester, New York 14620
 t: 585.381.9250
 Attn: Matt Horn, Director – Local Government Services
matt.horn@mrbgroupp.com
www.mrbgroup.com
 d: 585.340.3668
 m: 571.439.0845

With a copy to:

MRB Group, P.C.
 The Culver Road Armory
 145 Culver Rd #160,
 Rochester, New York 14620
 Attention: Chief Legal Officer

Section 25. Business Prohibitions and Requirements

1. Prohibition on Contracts with Companies Boycott of Israel

By executing this contract, CONSULTANT verifies that it does not Boycott Israel, and agrees that during the term of this Contract will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

2. Transactions with an Abortion Provider or Affiliate

CONSULTANT certifies that it is not an abortion provider nor an affiliate of such a provider as noted in Texas SB 22, codified in Texas Government Code Chapter 2272, and effective September 1, 2019. If this provision is violated by CONSULTANT, Contract and/or taxpayer resource transaction is voidable by CITY and Offeror agrees to defend and indemnify CITY against any action brought by the Office of the Attorney General for a violation of Section 2272.003. <https://www.texasattorneygeneral.gov/abortion-provider-affiliate-transactions-prohibited#:~:text=Except%20as%20otherwise%20specified%20in,affiliate%20of%20an%20abortion%20provider.>

3. Prohibition against doing business with Foreign Terrorist Organizations

By executing this contract, CONSULTANT verifies that, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, and Section 2252.153, it does not appear on the Comptroller of the State of Texas listing of companies which do business with Iran, Sudan, or any Foreign Terrorist Organization, as identified under Section 806.051, Section 807.051 or Section 2253.253, listing of companies.

4. Discrimination Against Firearm & Ammunition Industries

Vendor certifies and verifies that (1)neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the “Vendor Companies”), does not have a written or unwritten internal practice, policy, guidance, or directive that discriminates against a firearm entity or

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firearm trade association based solely on its status as a firearm entity or firearm trade association and (2) Vendor agrees that Vendor and Vendor Companies will not discriminate during the term of the contract against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association during the term of this contract pursuant to the provisions of Texas Government Code Chapter 2274. For purposes of this Contract, the term "Discriminate against a firearm entity or firearm trade association" shall have the meaning defined in Texas Government Code Chapter 2274.

5. Boycotting of Energy Companies

Vendor certifies and verifies that it is not a company identified on the Texas Comptroller's list of companies known to boycott energy companies, as defined in Texas Government Code Chapter 809. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts energy companies and Vendor agrees that Vendor and Vendor Companies will not boycott energy companies during the term of this contract pursuant to the provisions of Texas Government Code Chapter 809. For purposes of this Contract, the term "boycott energy company" shall have the meaning defined in the Texas Government Code Chapter 80.

6. Certificate of Interested Parties Electronic Filing (See Exhibit C)

No officer, employee, independent consultant, or elected official of the CITY who is involved in the development, evaluation, or decision-making process of the performance of any solicitation or contract shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation or proposal. Any violation of this provision, with the knowledge, expressed or implied, of the CONSULTANT shall render the Contract voidable by the CITY. In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the CITY of Duncanville may not enter into this contract unless the CONSULTANT submits a disclosure of interested parties (Form 1295) to the CITY at the time the CONSULTANT submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission. CONSULTANT will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908. <https://www.ethics.state.tx.us/filinginfo/1295/>

The CITY must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

Section 26. Funding and Non-Appropriation Clause

The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. CONSULTANT recognizes that the continuation of any multi-year contract after the close of, or during, any given fiscal year of the CITY, which fiscal year ends on September 30 of each year, shall be subject to Council budget approval of the CITY providing for or covering such contract as an expenditure therein. Should funding not be approved by the City Council for any given budget year during the contract term, the contract will terminate and become null and void; however, any services performed, and approved to

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date shall be paid.

The CITY shall provide the CONSULTANT written notice of the failure of the CITY to make an adequate appropriation for any fiscal year to pay the amounts due under the multi-year contract, or the reduction of any appropriation to an amount insufficient to permit the CITY to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the CITY.

Section 27. Revisions of Scope of Services and Workplan

In response to changes in needs of the project, CITY reserves the right to direct substantial revision to the scope of services initially agreed, including changes to the drawings, specifications, or other project documents after due approval by CITY, as CITY may deem necessary. In such event, CITY shall pay CONSULTANT its regular compensation for services rendered in making such revisions, provided such compensation is customarily reasonable. When CONSULTANT is directed to make substantial revisions under this section of the contract, CONSULTANT shall provide to CITY a written proposal for the entire costs involved and the completion time involved in providing the revisions. CITY shall not knowingly require any revision that is illegal or that violates the professional ethics of CONSULTANT. Prior to CONSULTANT undertaking any substantial revision as directed by CITY, CITY must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the services.

Section 28. Right to Inspect/Audit Records

CONSULTANT agrees that CITY shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of CONSULTANT involving transactions relating to this contract. CONSULTANT agrees that CITY shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided with adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. CITY shall give CONSULTANT reasonable advance notice of intended audits no less than 3 business day(s). CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or subcontractors agrees that CITY shall, until the expiration of three (3) years after final payment under any subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractors transactions regarding the CONTRACT, and further, that CITY shall have access during normal working days and hours, and shall give the CONSULTANT or subcontractor(s) reasonable advance notice of intended audits no less than 3 business day(s).

The CONSULTANT shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The CONSULTANT shall retain all such records for a period of three (3) years after the expiration of the Contract, or until the Federal Auditor, CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The CONSULTANT shall grant access to all books, records, and documents pertinent to the Contract to the Federal Auditor, CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

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**Section 29. Successors and Assigns**

CITY and CONSULTANT each bind itself and its successors, executors, administrators and assigns to the other party of this contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

Section 30. Disclosure of No Conflicts of Interest (Exhibit B)

By signing this contract, CONSULTANT acknowledges to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed project and business relationships with abutting property owners. CONSULTANT further agrees that it will make disclosure in writing of any conflicts of interest which develop subsequent to the signing of this contract and prior to final payment under the contract.

Section 31. Workforce

A. The CONSULTANT shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. While in the course and scope of delivering goods or services under a City of Duncanville contract or on the CITY's property, a CONSULTANT shall not:

1. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
2. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the CITY or the CITY's representative notifies the CONSULTANT that any worker is incompetent, disorderly, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the CONSULTANT shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the CITY's prior written consent.

Section 32. Compliance with Health, Safety, and Environmental Regulations.

The CONSULTANT, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the CITY and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The CONSULTANT shall indemnify and hold the CITY harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of the CONSULTANT's obligations under this paragraph.

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Environmental Protection: The CONSULTANT shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

Section 33. Immigration Control and Employment Verification

Employment eligibility verification: The immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. Department of Justice Form I-9. The CONSULTANT warrants that CONSULTANT is in compliance with IRCA during the term of this contract with the CITY. The CONSULTANT warrants that the CONSULTANT has included or will include a similar provision in all written contracts with any Subcontractor(s) engaged to perform services under this Contract.

Section 34. Non-Discrimination and Equal Employment Opportunity

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. CONSULTANT shall take affirmative action to ensure that applicants and employees are treated during their employment or recruitment, without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include but not be limited to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection of training, including apprenticeship.

Section 35. Non-Suspension or Debarment Certification.

The CITY is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Duncanville Contracts. By accepting a Contract with the CITY, the CONSULTANT certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Duncanville.

CONSULTANT certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of Treasury, Office of Foreign Assets Control.

Section 36. Public Information Act.

Information, documentation, and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with the provisions of Section 2252.907 of the Texas Government Code, the CONSULTANT is required to make any information created or exchanged with the CITY pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional cost to the CITY. This information will be provided to the City's Public

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Information Officer. The cost of preparation of such information requests will be tabulated and billed to the CITY. The CONSULTANT shall mark "cost schedules and determinations of cost" submitted to the CITY as "CONFIDENTIAL".

Section 37. Counterparts.

This Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

Section 38. Exhibits

The Exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

Section 39. Survival of Obligations

Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Contract shall survive termination.

Section 40. Place and Condition of Work

The CITY shall provide the CONSULTANT with access to the sites where the CONSULTANT may perform the services in a timely and efficient manner, and in accordance with and subject to the applicable security laws, rules, and regulations. The CONSULTANT acknowledges that it has satisfied itself as to the nature of the CITY's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor, and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the CONSULTANT's obligations under the contract. The CONSULTANT hereby releases and holds the CITY harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from the expected conditions.

The CONSULTANT shall, at all times, exercise reasonable precautions for the safety of their employees, CITY Staff, participants, and others on or near the CITY's facilities.

Section 41. Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

Section 42. Buy American Act and Domestic Preference

As appropriate, and to the extent consistent with law, the CONSULTANT shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

The following federally funded requirements are applicable in accordance with the Buy-American Act.

A. Definitions. As used in this paragraph:

i. "Component" means an article, material, or supply incorporated directly into an end product.

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Exhibit A



ii. "Cost of components" means -

(1) For components purchased by the CONSULTANT, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the CONSULTANT, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The CITY does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The CONSULTANT shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

Section 43. Compliance with all State, Federal, and Local Laws

The CONSULTANT shall comply with all applicable State, Federal (including Executive Orders), and Local laws, and requirements. The CONSULTANT must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The CONSULTANT shall give all notices and comply with all laws and regulations applicable to the furnishing and performance of the Contract.

Section 44. Federal. State. And local requirements

CONSULTANT shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. CONSULTANT is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance

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Exhibit A



coverage. CONSULTANT shall ensure compliance with all federal and State tax laws and withholding requirements. The CITY of Duncanville shall not be liable to CONSULTANT or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. CONSULTANT shall indemnify the CITY of Duncanville and shall pay all costs, penalties, or losses resulting from CONSULTANT's omission or breach of this Section.

Section 45. Drug-Free Workplace

The CONSULTANT shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the CONSULTANT shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

Section 46. CONSULTANT Liability for Damage to Government Property

The CONSULTANT shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the CONSULTANT and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The CONSULTANT shall notify the CITY of Duncanville Chief Procurement Officer in writing of any such damage within one (1) calendar day.

Section 47. Force Majeure

The CITY of Duncanville, any Customer, and the CONSULTANT shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, fire, or other unavoidable cause not attributable to the fault or negligence of the CITY of Duncanville. In the event of an occurrence under this Section, the CONSULTANT will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail, and the CONSULTANT continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The CONSULTANT shall immediately notify the CITY of Duncanville **Chief Procurement Officer** by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

Section 48. Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

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**Section 49. No Waiver of Sovereign Immunity**

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the CITY of Duncanville of any immunities from suit or from liability that the CITY of Duncanville may have by operation of law.

Section 50. Confidentiality

In order to provide the deliverables to the CITY, CONSULTANT may require access to certain of the CITY's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the CITY or its licensors consider confidential) (collectively, "Confidential Information"). CONSULTANT acknowledges and agrees that the Confidential Information is the valuable property of the CITY and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the CITY and/or its licensors. The CONSULTANT (including its employees, subcontractor's, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the CITY or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the CONSULTANT promptly notifies the CITY before disclosing such information so as to permit the CITY reasonable time to seek an appropriate legal remedy. The CONSULTANT agrees to use protective measures no less stringent than the CONSULTANT uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

Section 51. Non-Publicity

City of Duncanville and Consultant agree not to disclose the existence or contents of this Contract to any third party without the prior written consent of the other party except: (a) to its advisors, attorneys or auditors who have a need to know such information, (b) as required by law or court order, (c) as required in connection with the reorganization of a party, or its merger into any other corporation, or the sale by a party of all or substantially all of its properties or assets, or (d) as may be required in connection with the enforcement of this Contract.

Section 52. No Warranty by City Against Infringements

The CONSULTANT represents to the CITY that: (i) the CONSULTANT shall provide the CITY the deliverables and (ii) the deliverables supplied by the CONSULTANT in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the CONSULTANT does not know of any valid basis for any such claims. The CONSULTANT shall, at its sole expense, defend, indemnify, and hold the CITY harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the CITY's exercise anywhere in the world of the rights associated with the CITY's ownership, and if applicable, license rights, and its use of the deliverables infringes the

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Contract 24-14620

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intellectual property rights of any third party; or (ii) the CONSULTANT's breach of any of CONSULTANT's representations or warranties stated in this Contract. In the event of any such claim, the CITY shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the CITY's behalf. Further, CONSULTANT agrees that the CITY's specifications regarding the deliverables shall in no way diminish CONSULTANT's warranties or obligations under this paragraph and the CITY makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of CONSULTANT.

Section 53. Warranty-Services

The Consultant represents that all services to be provided to the City of Duncanville under the Contract will be fully and timely performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license and all applicable Federal, State, and local laws, rules, or regulations. The CONSULTANT makes no warranty, express or implied, as to its professional services rendered under this agreement.

Section 54. Byrd Anti-Lobbying Act Requirements

The CONSULTANT hereby certifies, for contracts exceeding \$100,000, that no federal appropriated funds from this contract shall be used to pay any person or organization for influencing or attempting to influence an officer, or employee of any Local, State, or Federal agency, or a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, loan, grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement, or any other award cover by [31 U.S.C. 1352](#).

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit **Standard Form-LLL, "Disclosure Form to Report Lobbying,"** in accordance with its instructions.

Section 55. Clean Air Act Requirements

In accordance with the provisions of the Federal Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended, for contracts in excess of \$150,000, the CONSULTANT certifies that it shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Section 56. Solid Waste Disposal Act

In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule, meeting contract performance requirements, or at a reasonable price. The CONSULTANT also agrees

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Exhibit A



to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Section 57. Claims

If any claim, demand, suit, or other action is asserted against the CONSULTANT which arises under or concerns the Contract, or which could have a material adverse effect on the CONSULTANT’s ability to perform thereunder, the CONSULTANT shall give written notice thereof to the CITY within ten (10) calendar days after receipt of notice by the CONSULTANT. Such notice to the CITY shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the Duncanville Chief Procurement Officer. Personal delivery to the CITY is defined in the Notices section.

Section 58. Compliance with the Copeland Anti-Kickback Act

The CONSULTANT shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Section 59. Prohibition on Contracting for Covered Telecommunications Equipment or Services

The CONSULTANT shall comply with Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 which prohibits the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Provided Technology is procured through this Contract, the CONSULTANT shall be required to complete and submit [Federal Form NDAA-899](#).

Section 60. Entire Contract

This contract embodies the complete contract of the parties hereto, superseding all oral or written previous and contemporary contracts between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written contract of the parties.

Section 61. Pass Down Language Requirement

Provided the CONSULTANT utilizes any subcontractors in the performance of this contract, the CONSULTANT shall require the subcontractor to adhere and comply with the terms and conditions of this Contract by incorporating such into a written contract between the CONSULTANT and the subcontractor.

Exhibit A



Conflicts of Language: Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.

1. Final negotiated contract
2. Solicitation documents
3. CITY's standard terms and conditions
4. Purchase order.
5. Proposal documents and CONSULTANT terms and conditions

(Signature follows this page)

Exhibit A



EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS CONTRACT, SUCH A PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS CONTRACT. THIS CONTRACT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF DRAFTING OR PREPARATION HEREOF.

This Contract may be executed in multiple counterparts, including by fax or email, each an original, but all considered part of one Contract. The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed original for all legal purposes. IN WITNESS WHEREOF, the parties of these presents have executed this contract in the year and day first above written.

CITY OF DUNCANVILLE, TEXAS

MRB GROUP, P.C.

Authorized Signature

Authorized Signature

Name: Doug Finch
Title: City Manager

Name: Matt Horn
Title: Director/Local Government

Date

Date

972-780-5058

585-340-3668

Phone Number

Phone Number

purchasing@duncanvilletx.gov

mattl.horn@mrbgroup.com

Email Address

Email Address

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

Exhibit A



Exhibit A – Scope of Services, Deliverables, and Schedule


www.mrbgroup.com

June 27, 2024

Douglas Finch, City Manager
City of Duncanville
203 East Wheatland Road
Duncanville, Texas 75116

**RE: PROPOSAL FOR PROFESSIONAL SERVICES
CITY OF DUNCANVILLE COMPREHENSIVE PLAN/ECONOMIC DEVELOPMENT STRATEGY**

Dear Mr. Finch:

The City of Duncanville has shown a commitment to intentional growth and development, and the provision of a strong quality of life for its residents. A comprehensive plan and economic development strategy set forth a clear course of action for the City and your stakeholders to advance toward a clear, unified vision for the ideal Duncanville.

In accordance with our formal proposal, dated March 26, 2024, this agreement serves to formalize our engagement to provide professional services for the development of a comprehensive plan. Additionally, in alignment with the recently developed Economic Development Organizational Plan developed by MRB Group, and at the City's request, we have also provided a proposed scope for the development of a complementary economic development strategy.

I. Project Overview

The comprehensive plan and complementary economic development strategy address key elements of the City's overarching policy framework. While strongly aligned, each can be independently used to address critical decisions facing Duncanville's leadership over the next twenty years.

A. Comprehensive Plan

This policy document, and the associated development process, works to develop a clear, unified vision for the City, and to identify those overarching strategic imperatives and near-term goals/actions necessary to advance you toward the vision.

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Exhibit A



B. Economic Development Strategy

This framework assists the City in focusing resources and effort on those economic development initiatives that will drive those investments in the community that result in strength of place, wealth creation for residents, and revenues to support City operations.

II. Scope of Services and Compensation

To maximize the efficiency of delivery and enhance value for City investment, these two strategy frameworks will be developed in tandem: capturing economies of scale and ensuring no duplication of effort.

A. Comprehensive Plan

Our team will assist the City in the development of a unified vision and associated strategies for growth, development, and enhancement of quality of life, including:

1. Development of a project management framework, including bi-weekly project management meetings with City project leadership, and monthly progress reports to City Council
2. Facilitation of ten (10) monthly meetings with a project steering committee, selected by City leadership, and representing the diversity of the Duncanville community
3. Development and execution of a Public Engagement Strategy; leveraging a diverse set of tools to reach as broad a segment of the community as possible
4. Development of an existing conditions profile that summarizes demographic and economic conditions and trends, City facilities, services, and other operations, and other local indicators that will influence the planning process
5. Creation of a clear vision statement to serve as the anchor of the plan, and 4 – 6 governing principles that address the decision-making framework for the City
6. Development of 4 – 6 priority policy areas, and associated strategies and goals

Exhibit A



7. Development of a future land use plan that identifies preferred development patterns and allocated land uses
8. Development of a five-year implementation framework to address initial actions to be taken by the City is advancing toward your vision
9. Final presentation to City Council and support in adoption

Subtotal of A, Items 1-9 \$134,750.00

B. Economic Development Strategy
Our economic development team will assist the City and your stakeholders in crafting a business recruitment, retention, and expansion strategy, including:

1. Creation of an economic base report, analyzing real estate, workforce, and other market data associated with the economic potential of the City
2. Interviews with regional stakeholders, including real estate investors, major employers, and other potential economic development partners to determine development preferences and capacity
3. Inventory of key development sites, including locations, site conditions, infrastructure capacity, land use designations, and other factors influencing development
4. Development of a series of recommended actions, policies, funding sources, and other implementation elements designed to address your development priorities
5. Meetings with Duncanville Economic Development Corporation to refine the final strategy goal areas

Subtotal of B, Items 1-5..... \$23,500.00

Total Compensation \$158,250.00

Exhibit A



The cost figures shown above represent our lump sum amount. Any additional work beyond this fee and outside the scope of this proposal would be reviewed with the Client. MRB Group shall submit monthly statements for services rendered during each invoicing period based on the efforts performed during that period. MRB Group Standard Rates are subject to annual adjustment.

III. Project Schedule

The plan development processes will run concurrently and are expected to be completed within twelve months from project kickoff through adoption.

IV. Additional Services

The following items, not included in the above services, can be provided on a personnel time-charge basis but would only be performed upon receipt of your authorization.

- A. The project development process anticipates ten (10) monthly meetings with the project steering committee and a 12-month project completion schedule. Additional meetings and / or time extensions requested by the client may be facilitated on a time and expense basis.
- B. Implementation monitoring and performance measurement
- C. Capital project development

V. Commencement of Work

Upon receipt of the signed proposal, MRB Group will begin work on the project.

Exhibit A



If this proposal is acceptable to you, please sign where indicated and return one copy to our office. Thank you for your consideration of our firm. We look forward to working with you on this project.

Sincerely,

Trey Taylor, PE
Central Texas Operations Manager

Matt Horn
Director, Local Government Services

<https://mrbgroup365.sharepoint.com/sites/Proposals/Shared Documents/Texas/Duncanville, City of/O-24-0342 Comprehensive Plan/City of Duncanville Comp Plan.docx>

PROPOSAL ACCEPTED FOR THE CITY OF

Signature	Title	Date
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Exhibit A



Exhibit B – Conflict of Interest Form

NOTICE TO VENDORS AND INSTRUCTIONS FOR CONFLICT-OF-INTEREST QUESTIONNAIRE

H.B. 914, passed during the 2005 Texas legislative session, became effective on January 1, 2006. The bill enacts Local Government Code Chapter 176. That bill requires a vendor that wishes to conduct business or be considered for business with the City of Duncanville to file a “conflict of interest questionnaire.” The Texas Ethics Commission (TEC) created the conflict-of-interest questionnaire (FORM CIQ).

Section 176.006 requires disclosing a person’s “affiliations or business relationships that might cause a conflict of interest.” The term “affiliation” is not defined in Chap. 176. However, the general definition of “affiliation” would mean any association or connection. So, any affiliation, including friendship, membership in some group or organization, residence in the same neighborhood, relationship by blood or marriage, or any other connection, must be disclosed.

How to fill out the Conflict-of-Interest Questionnaire form:

Each number below corresponds with the number on FORM CIQ:

1. Fill in the full name of the person (you) trying to do business with the City of Duncanville. If the business is a corporation, partnership, etc., then each person who acts as an agent for the business in dealings with the City of Duncanville must complete this form.
2. Check box if the form is an update to a form previously completed. Updates are required by law by September 1 of each year in which the person submits a proposal, bid or response to the City of Duncanville or begins contract discussions or negotiations with the City of Duncanville. Updates are also required by the 7th business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate.
3. Describe how you are affiliated or related to a City of Duncanville employee, City Council member, or contractor with the City of Duncanville (such as an engineering or architectural firm) who makes recommendations to the City for awards. **If no affiliation or business relationship exists, state “None.”**
4. Describe how you are affiliated with or related to a local government officer. **If no affiliation or business relationship exists, state “None.”**
5. Complete this Section by listing the name of each local government officer with whom there is an affiliation or business relationship, and you checked the “Yes” box in Section 5 A, B, or C.
6. Describe any other affiliation or business relationship that might cause a conflict. If no conflicts check the #4 box as well.
7. **Signature box. Date and sign the form. A signature is required from the person completing the form even if “None” entered in boxes 3, 4, & 6.**

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Contract 23-0032

Exhibit A



CONFLICT OF INTEREST QUESTIONNAIRE -	FORM CIQ
For vendor or other person doing business with local governmental entity	
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.	
This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government, Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	
1 Name of vendor who has a business relationship with local governmental entity.	
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3 Name of local government officer about whom the information in this section is being disclosed. _____ Name of Officer This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more? ☐ Yes ☐ No D. Describe each employment or business and family relationship with the local government officer named in this section.	
4 ☐ I have no Conflict of Interest to disclose.	
5 _____ Signature of vendor doing business with the governmental entity Date	

Exhibit A



Exhibit C – Form 1295 Instructions

Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the CITY may not enter into this contract unless the CONSULTANT submits a disclosure of interested parties (Form 1295) to the CITY at the time the CONSULTANT submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

CONSULTANT will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The CONSULTANT shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State.
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on the signature page of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@duncanville.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The CITY must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

Exhibit A



Exhibit D – Texas House Bill 89 Verification Statement

For the City of Duncanville, Texas Agreements

I, _____ (Person name), the undersigned representative
of _____ (Company or Business name)

_____ (hereafter referred to as company) do hereby verify
that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter
2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, Texas Government Code:

1. *“Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *“Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

DATE

SIGNATURE OF COMPANY REPRESENTATIVE



Exhibit E– Consultant Verification Form

For the City of Duncanville, Texas Agreements

By executing this document, the undersigned CONSULTANT named below, which is an individual, firm, or corporation engaged in the physical performance of services in Texas under a contract with the **City of Duncanville** affirms that it has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in Texas Government Code Section 2269, et. seq.

Furthermore, CONSULTANT will continue to use the federal work authorization program throughout the contract period and will contract for the performance of services in satisfaction of such contract only with subcontractors who present to CONSULTANT an affidavit containing the information required by Texas Government Code Section 2269, et. seq. The undersigned CONSULTANT attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number Date of Authorization

CONSULTANT:

Project:

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____, in _____ (city), _____ (state).

BY: CONSULTANT Authorized Officer or Agent Date

Printed Name and Title of Authorized Officer or Agent

www.mrbgroup.com

June 27, 2024

Douglas Finch, City Manager
City of Duncanville
203 East Wheatland Road
Duncanville, Texas 75116

**RE: PROPOSAL FOR PROFESSIONAL SERVICES
CITY OF DUNCANVILLE COMPREHENSIVE PLAN/ECONOMIC DEVELOPMENT STRATEGY**

Dear Mr. Finch:

The City of Duncanville has shown a commitment to intentional growth and development, and the provision of a strong quality of life for its residents. A comprehensive plan and economic development strategy set forth a clear course of action for the City and your stakeholders to advance toward a clear, unified vision for the ideal Duncanville.

In accordance with our formal proposal, dated March 26, 2024, this agreement serves to formalize our engagement to provide professional services for the development of a comprehensive plan. Additionally, in alignment with the recently developed Economic Development Organizational Plan developed by MRB Group, and at the City's request, we have also provided a proposed scope for the development of a complementary economic development strategy.

I. Project Overview

The comprehensive plan and complementary economic development strategy address key elements of the City's overarching policy framework. While strongly aligned, each can be independently used to address critical decisions facing Duncanville's leadership over the next twenty years.

A. Comprehensive Plan

This policy document, and the associated development process, works to develop a clear, unified vision for the City, and to identify those overarching strategic imperatives and near-term goals/actions necessary to advance you toward the vision.



Douglas Finck, City Manager
City of Duncanville

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- B. Economic Development Strategy
This framework assists the City in focusing resources and effort on those economic development initiatives that will drive those investments in the community that result in strength of place, wealth creation for residents, and revenues to support City operations.

II. Scope of Services and Compensation

To maximize the efficiency of delivery and enhance value for City investment, these two strategy frameworks will be developed in tandem; capturing economies of scale and ensuring no duplication of effort.

- A. Comprehensive Plan
Our team will assist the City in the development of a unified vision and associated strategies for growth, development, and enhancement of quality of life, including:
1. Development of a project management framework, including bi-weekly project management meetings with City project leadership, and monthly progress reports to City Council
 2. Facilitation of ten (10) monthly meetings with a project steering committee, selected by City leadership, and representing the diversity of the Duncanville community
 3. Development and execution of a Public Engagement Strategy; leveraging a diverse set of tools to reach as broad a segment of the community as possible
 4. Development of an existing conditions profile that summarizes demographic and economic conditions and trends, City facilities, services, and other operations, and other local indicators that will influence the planning process
 5. Creation of a clear vision statement to serve as the anchor of the plan, and 4 – 6 governing principles that address the decision making framework for the City
 6. Development of 4 – 6 priority policy areas, and associated strategies and goals



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7. Development of a future land use plan that identifies preferred development patterns and allocated land uses
8. Development of a five-year implementation framework to address initial actions to be taken by the City is advancing toward your vision
9. Final presentation to City Council and support in adoption

Subtotal of A, Items 1-9 \$134,750.00

B. Economic Development Strategy

Our economic development team will assist the City and your stakeholders in crafting a business recruitment, retention, and expansion strategy, including:

1. Creation of an economic base report, analyzing real estate, workforce, and other market data associated with the economic potential of the City
2. Interviews with regional stakeholders, including real estate investors, major employers, and other potential economic development partners to determine development preferences and capacity
3. Inventory of key development sites, including locations, site conditions, infrastructure capacity, land use designations, and other factors influencing development
4. Development of a series of recommended actions, policies, funding sources, and other implementation elements designed to address your development priorities
5. Meetings with Duncanville Economic Development Corporation to refine the final strategy goal areas

Subtotal of B, Items 1-5..... \$23,500.00

Total Compensation \$158,250.00



Douglas Finck, City Manager
City of Duncanville

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The cost figures shown above represent our lump sum amount. Any additional work beyond this fee and outside the scope of this proposal would be reviewed with the Client. MRB Group shall submit monthly statements for services rendered during each invoicing period based on the efforts performed during that period. MRB Group Standard Rates are subject to annual adjustment.

III. Project Schedule

The plan development processes will run concurrently and are expected to be completed within twelve months from project kickoff through adoption.

IV. Additional Services

The following items, not included in the above services can be provided on a personnel time-charge basis, but would only be performed upon receipt of your authorization.

- A. The project development process anticipates ten (10) monthly meetings with the project steering committee and a 12-month project completion schedule. Additional meetings and / or time extensions requested by the client may be facilitated on a time and expense basis.
- B. Implementation monitoring and performance measurement
- C. Capital project development

V. Commencement of Work

Upon receipt of the signed proposal, MRB Group will begin work on the project.

VI. Standard Terms and Conditions

Attached hereto and made part of this Agreement is MRB Group's *Standard Terms and Conditions*.



Douglas Finck, City Manager
City of Duncanville
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If this proposal is acceptable to you, please sign where indicated and return one copy to our office. Thank you for your consideration of our firm. We look forward to working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Trey Taylor".

Trey Taylor, PE
Central Texas Operations Manager

A handwritten signature in black ink, appearing to read "Matt Horn".

Matt Horn
Director, Local Government Services

<https://mrbgroup365.sharepoint.com/sites/Proposals/Shared Documents/Texas/Duncanville, City of/O-24-0342 Comprehensive Plan/City of Duncanville Comp Plan.docx>

PROPOSAL ACCEPTED FOR THE CITY OF DUNCANVILLE BY:

_____	_____	_____
<i>Signature</i>	<i>Title</i>	<i>Date</i>



**MRB GROUP, P.C.
AGREEMENT FOR PROFESSIONAL SERVICES
STANDARD TERMS AND CONDITIONS**

A. TERMINATION

This Agreement may be terminated by either party with seven days' written notice in the event of substantial failure to perform in accordance with the terms hereof by one party through no fault of the other party. If this Agreement is so terminated, the Professional Services Organization (hereinafter referred to as P.S.O.) shall be paid for services performed on the basis of his reasonable estimate for the portion of work completed prior to termination. In the event of any termination, the P.S.O. shall be paid all terminal expenses resulting therefrom, plus payment for additional services then due. Any primary payment made shall be credited toward any terminal payment due the P.S.O. If, prior to termination of this Agreement, any work designed or specified by the P.S.O. during any phase of the work is abandoned, after written notice from the client, the P.S.O. shall be paid for services performed on account of it prior to receipt of such notice from the client.

B. OWNERSHIP OF DOCUMENTS

All reports, drawings, specifications, computer files, field data and other documents prepared by the P.S.O. are instruments of service and shall remain the property of the P.S.O. The client shall not reuse or make any modification to the instruments of service without the written permission of the P.S.O. The client agrees to defend, indemnify and hold harmless the P.S.O. from all claims, damages, liabilities and costs, including attorneys' fees, arising from reuse or modification of the instruments of service by the client or any person or entity that acquires or obtains the instruments of service from or through the client.

C. ESTIMATES

Since the P.S.O. has no control over the cost of labor and materials, or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications, but the P.S.O. does not guarantee the accuracy of such estimates as compared to the Contractor's bid or the project construction cost.

D. INSURANCE

The P.S.O. agrees to procure and maintain insurance at the P.S.O.'s expense, such insurance as will protect him and the client from claims under the Workmen's Compensation Act and from claims for bodily injury, death or property damage which may arise from the negligent performance by the P.S.O. or his representative.

E. INDEPENDENT CONTRACTOR

The P.S.O. agrees that in accordance with its status as an independent contractor, it will conduct itself with such status, that it will neither hold itself out as nor claim to be an officer or employee of the client, by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the client, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits or Social Security coverage.



F. SUCCESSORS AND ASSIGNS

The client and the P.S.O. each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the client nor the P.S.O. shall assign, submit or transfer his interest in this Agreement without the written consent of the other.

G. P.S.O. NOT RESPONSIBLE FOR SAFETY PROVISIONS

The P.S.O. is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The P.S.O. is not responsible for the Contractor's failure to execute the work in accordance with the Contract Drawings and/or Specifications.

H. INVOICES AND PAYMENT

Client will pay MRB Group, P.C. for services in respect of the period during which Services are performed in accordance with the fee structure and work estimate set forth in the proposal. Invoices will be submitted on a periodic basis, or upon completion of Services, as indicated in the proposal or contract. All invoices are due upon receipt. Any invoice remaining unpaid after 30 days will bear interest from such date at 1.5 percent per month or at the maximum lawful interest rate, if such lawful rate is less than 1.5 percent per month. If client fails to pay any invoice when due, MRB may, at any time, and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of Services upon ten (10) days prior written notice by MRB to client. Notwithstanding any termination of Services by MRB for non-payment of Invoices, Client shall pay MRB in full for all Services rendered by MRB to the date of termination of Services plus all interest and termination costs and expenses incurred by MRB that are related to such termination. Client shall be liable to reimburse MRB for all costs and expenses of collection, including reasonable attorney's fees.

I. FEES REQUIRED FROM JURISDICTIONAL AGENCIES

MRB Group, P.C. is not responsible for nor does the Compensation Schedule established in the Agreement include fees or payments required of jurisdictional agencies. The client herein agrees to pay all application, entrance, recording and/or service fees required by said agencies.

J. P.S.O. NOT AN EMPLOYEE

The P.S.O. agrees not to hold himself out as an officer, employee or agent of the Owner, nor shall he make any claim against the Owner as an officer, employee or agent thereof for such benefits accruing to said officers, employees or agents.

K. INDEMNITY

The Owner will require any Contractor and Subcontractors performing the work to hold it harmless and indemnify and defend the Owner and P.S.O., their officers, employees and agents from all claims resulting from the Contractor's negligence in the performance of the work.