

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> July 8, 2014		<b>DATE SUBMITTED:</b> June 23, 2014	
<b>DEPARTMENT OF ORIGIN:</b> Fiscal Services		<b>SUBMITTED BY:</b> Joe Hegwood	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration and possible action to approve an agreement with Weaver and Tidwell, L.L.P., to provide professional auditing services to the City of Bryan for three (3) fiscal years beginning with Fiscal Year 2014 and providing for up to two (2) additional one year extensions. The “not-to-exceed” contract is limited to \$315,250 for the initial three (3) year term.			
<b>SUMMARY STATEMENT:</b> The City’s previous audit agreement with Weaver and Tidwell, L.L.P. (Weaver), started in Fiscal Year 2009 and ended with its completion of the Fiscal Year 2013 audit.			
<p>In a combined effort, City and BTU staff issued a Request for Qualifications (RFQ) for accounting firms for professional audit services beginning with the 2014 fiscal year and subsequent years. Six (6) responses were received. The City is required under State law, the City’s Charter, and bond covenants to prepare and submit an audit annually to the City Council and make it available for others who may have an interest in the finances of the City.</p> <p>The review committee is required by State statute to assess each firm based solely on qualifications. Once the qualifications were assessed, the respondents were ranked according to criteria set forth in the RFQ. Based on the initial review of the submitted Statements of Qualification (SOQ), the top ranking firm was Weaver and Tidwell, L.L.P. Once the top ranking firm was established, City and BTU staff negotiated pricing and rate terms with Weaver. The City has reached a preliminary agreement with Weaver for an annual contract price of \$100,000 with a provision for an inflationary increase annually tied to the Consumer Price Index. The “not-to-exceed” contract is limited to \$315,250 for the initial three (3) year term. This pricing is in line with historical annual audit budgets.</p> <p>Based on the SOQ submitted and the subsequent negotiations, City and BTU staff recommend the City Council approve an agreement with Weaver and Tidwell, L.L.P.</p>			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> An annual audit is required by State law as well as the City’s Charter. Additional requirements for an annual audit are also included in the bond covenants of the City. Staff has reviewed the submitted Statements of Qualification and has determined, based on the qualifications set out by the RFQ, Weaver is recommended to perform the City’s and BTU’s annual audit.			
<b>OPTIONS (In Suggested Order of Staff Preference):</b>			
<ol style="list-style-type: none"> <li>1. Authorize the Mayor to execute an agreement with Weaver and Tidwell, L.L.P.</li> <li>2. Authorize the Mayor to execute an agreement with another qualifying firm, which may require negotiations</li> </ol>			

with another firm and consideration at a future City Council meeting.

3. Do not authorize the Mayor to execute an agreement with any firm and provide additional direction to staff.

**ATTACHMENTS:**

1. Professional Auditor Services - SOQ Tabulation Scoring for #14-038
2. Contract for Professional Audit Services (less Exhibits A and B)
3. The submissions from all respondents are available for review in the City Secretary's Office

**FUNDING SOURCE:** General Fund

**APPROVALS:** Hugh R. Walker, 06/24/2014

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 06/30/2014

**APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 07/01/2014**

Revised 05/2013

# Attachment #1

Professional Auditor Services  
SOQ Tabulation Scoring for #14-038

Open Date: May 29, 2014

All bids submitted are reflected on this bid tab sheet. However, the listing of a bid should not be construed as any indication that the City accepts such bid as responsive. The City will notify the successful bidder upon award of contract.

			Padgett Stratemann	Sanderson Knox	Belt Harris	Grant	PB&H	Weaver & Tidwell
ITEM	Weight Factor	CRITERIA	Average Points assigned times weight factor					
1	35	Qualifications and experience of the key personnel assigned to work with the City particularly as it relates to municipalities in the state of Texas	303.3	186.7	256.7	323.8	315.0	341.3
2	35	Technical ability of the Firm to perform the needed services, including the performance evaluation of any prior work experience with the City of Bryan and BTU.	291.7	163.3	233.3	332.5	315.0	341.3
3	15	Thoroughness of the proposal in responding to the City's requirements listed under Scope of Work	120.0	110.0	110.0	135.0	130.0	142.5
4	10	References related to similar engagement with other governmental entities with similar needs*	Not Scored	Not Scored	Not Scored	Not Scored	Not Scored	Not Scored
5	5	Certification of acknowledgements	50.0	50.0	50.0	50.0	50.0	50.0
<b>TOTAL POINTS</b>			<b>765.0</b>	<b>510.0</b>	<b>650.0</b>	<b>841.3</b>	<b>810.0</b>	<b>875.0</b>

## Attachment #2

### CONTRACT FOR Professional Auditor Services

This Contract, dated \_\_\_\_\_, 2014, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and Bryan Texas Utilities (BTU) and Weaver (the FIRM), whereby the FIRM agrees to provide the City and BTU with certain services as described herein and the City agrees to pay the FIRM for those services.

#### 1. Scope of Services

In consideration of the compensation stated in **Paragraph 2**, the FIRM agrees to provide the City with the services as described in **Exhibit A – RFQ #14-038 and Exhibit B – Weaver - Submittals to the City of Bryan and BTU** which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

#### “RFQ 14-038 Professional Auditor Services”

#### 2. Payment

In consideration of the FIRM’s provision of the services in compliance with all terms and conditions of this Contract, the City shall pay the FIRM according to the terms set forth in **Exhibit A and Exhibit B**. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all professional services and expenses provided under this Contract are based on an initial annual fee of \$100,000, escalated annually at the Consumer Price Index rate and in total shall not exceed **\$315,250.00** under the initial three year term.

#### 3. Time of Performance

A. All work and services provided under this Contract must be completed as outlined in **Exhibit A and Exhibit B**.

B. **Time is of the essence of this Contract.** The FIRM shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the project timeline specified in **Exhibit A and Exhibit B**.

#### 4. Warranty, Indemnification, & Release

A. As an experienced and qualified FIRM, the FIRM warrants that the information provided by the FIRM reflects high professional and industry standards, procedures, and performances. The FIRM warrants that the performance of all services under this Contract will be pursuant to a high standard of performance in the profession. The FIRM warrants that the FIRM will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the FIRM, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their services, or any document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the FIRM, its employees, associates, agents, or subcontractors.

B. The FIRM shall promptly correct any defective services or documents furnished by the FIRM at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the FIRM's services hereunder or of the scope of work itself shall in no way alter the FIRM's obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the FIRM is an independent contractor and not an agent or employee of the City. The FIRM and its employees are not the agents, servants, or employees of the City. As an independent contractor, the FIRM shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the FIRM shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The FIRM shall have ultimate control over the execution of the professional services. The FIRM shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the FIRM or any of the FIRM's subcontractors.

D. The FIRM must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the FIRM, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

**E. Responsibility for damage claims (indemnification): FIRM shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the FIRM's negligent performance of the work, or by or on account of any claims or amounts recovered under the Worker's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. The FIRM shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by FIRM's negligence.**

F. Release. The FIRM releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the FIRM or its employees and any loss of or damage to any property of the FIRM or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the FIRM's negligent performance of the work. Both the City and the FIRM expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

## **5. FIRM's Insurance**

The FIRM agrees to maintain, on a primary basis, for the duration of this contract the insurance coverage's and limits as described below. The FIRM must deliver to the City a certificate(s) of insurance evidencing that such policies are in full force and effect with verification within five (5) business days of notification of the City's intent to award a contract. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within five (5) business days may cause

the proposal to be rejected. The City reserves the right to obtain complete, certified copies of all required insurance policies at any time.

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by the FIRM, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the FIRM under the Agreement.

WORKERS' COMPENSATION INSURANCE & EMPLOYERS' LIABILITY INSURANCE – Statutory & \$500,000/\$500,000/\$500,000 Contractor agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Contractor shall require the subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subcontractor. Waiver of subrogation in favor of the City required. This requirement may be waived with satisfactory evidence that the contractor is sole proprietor(s)/has no employees.

COMMERCIAL GENERAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors. Additional insured endorsement required.

BUSINESS AUTOMOBILE LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned, and hired automobiles. Should the Contractor not own any automobiles and furnish satisfactory evidence of this, the business auto liability requirement shall be amended to allow the Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

PROFESSIONAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain Professional (Errors & Omissions) Liability to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the contractor or any person employed or acting on the contractor's behalf (including but not limited to sub-contractors). For policies written on a "claims-made" basis, contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this contract. The contractor is solely responsible for any additional premium for the supplemental extended reporting period.

UMBRELLA or EXCESS LIABILITY Contractor may satisfy the minimum liability limits required for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. The annual aggregate limit shall not be less than the highest "each occurrence" limit. Contractor agrees to endorse City as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

CONTRACTOR'S INSURANCE TO BE PRIMARY Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under the contract.

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

RIGHT TO REVIEW AND ADJUST The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

SUBCONTRACTOR'S INSURANCE Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified, provided the Contractor's insurance does not afford coverage on behalf of the subcontractor.

CERTIFICATE OF INSURANCE Contractor shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-" or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. The certificate(s) shall contain a provision that coverage under such policies shall not be cancelled or non-renewed until at least thirty (30) days prior written notice, or ten (10) days notice for cancellation due to non-payment of premiums, is given the City of Bryan.

If the event the City is notified that a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated. If the Contractor fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Contractor's expense.

Certificates and notices should be provided to the City at the following address:

City of Bryan  
Attn: Risk Department  
PO Box 1000  
Bryan, TX 77805

## **6. Termination**

A. The City may terminate this Contract at any time upon **thirty (30)** calendar day's written notice. Upon the FIRM's receipt of such notice, the FIRM shall cease work immediately. The FIRM shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the FIRM fails to fulfill its obligations under this Contract, or if the FIRM violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the FIRM **five (5)** calendar days written notice. The FIRM will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the FIRM of liability to the City for damages sustained by the City because of any breach of contract by the FIRM. The City may withhold payments to the FIRM for the purpose of setoff until the exact amount of damages due the City from the FIRM is determined and paid.

**7. Miscellaneous Terms**

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan:  
Attn: William Smith  
P.O. Box 1000  
Bryan, Texas 77805

The FIRM:  
Attn: Kevin Sanford, CPA  
24 Greenway Plaza, Suite 1800  
Houston, Texas 77046

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the FIRM and supersedes all prior contracts, negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the FIRM without the prior written approval of the City.

F. The FIRM, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The FIRM must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. Reimbursable or other miscellaneous expenses incurred by the FIRM shall be included in the contract price; additional payment for such expenses will not be considered.

H. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

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**CITY OF BRYAN:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED FOR PROCESSING:**

**ATTEST:**

\_\_\_\_\_  
Joe Hegwood, Chief Financial Officer

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**FIRM:**

(FIRMs – Corporate Seal)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS §

ACKNOWLEDGEMENT

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by

\_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas