

# REQUEST FOR PROPOSAL



**ECONOMIC DEVELOPMENT  
CONSULTATION SERVICES**

**REQUESTED WORK:**

The City of Powell, Ohio Community Improvement Corporation (the "CIC") is seeking proposals from firms experienced and knowledgeable in developing economic development strategies and plans for municipalities and community improvement corporations.

**ISSUED BY:**

The City of Powell Community Improvement Corporation

47 Hall Street

Powell, Ohio 43065

**DATED:**

Monday, March 7, 2022

**DATE DUE:**

Proposals will be received by the CIC until 2 pm E.S.T. on Friday, March 25, 2022

**Introduction to the City of Powell**

The City of Powell encompasses a geographic area of approximately six (6) square miles within a major US metropolitan footprint, located 30 minutes north of downtown Columbus. Money Magazine has included the City of Powell as the 18th Best Place to live in the United States. Powell's proximity to the Capital City of City of Columbus, and The Ohio State University, the Columbus Zoo and Aquarium, the Memorial Tournament Muirfield Village Golf Club offers an excellent balance between a smaller city's sense of place and access to opportunity and amenities associated with a vibrant, urban, metropolitan center.

Powell provides its residents the best of both worlds – it is small enough to maintain a level of familiarity and true sense of place, yet still large enough to have the feel, opportunity and amenities associated with a vibrant urban center.

Major, class-leading health care systems maintain a significant physical presence in the City in the form of the future OSU Wexner Medical Center, the Ohio Health Network, and Mount Carmel.

The City provides a full complement of local government services including an extensive parks network, a world class police department, and comprehensive street and pedestrian thoroughfares.

The City of Powell is a Council-Manager form of local government and the organization consists of approximately 50 full-time employees.

The City is benefitting from a significant and consistent period of public and private sector investment. Powell's population is estimated at 14,000 in 2021 compared to 2,100 in 1990.

## Background

The City of Powell adopted a Comprehensive Plan in 2015 to serve as the principal guiding document when addressing long-term goals, growth and development issues: (<https://cityofpowell.us/wp-content/uploads/2019/04/15-1006-Powell-Comprehensive-Plan-ADOPTED-LR.pdf> ). This policy document was designed to outline land use character, transportation and connectivity concerns, broad economic conditions and proposed initiatives, environment and resiliency strategies, and civic spaces and places needs and opportunities. Aimed at setting broad parameters, objectives and implementation strategies to protect, preserve and enhance our community's physical character and quality of life, this document established the need for further investment in strategic economic development planning. The services that the CIC is seeking is the first comprehensive review of an economic development strategy that the City has undertaken. The City anticipates this effort will take into account the special character, opportunities and goals of the City of Powell.

Having faced challenging years as a result of mostly unplanned development patterns, the City currently maintains a AAA bond rating from S&P and Moody's. As a small full-service city, Powell has sought to diversify its economic base in pursuit of robust and resilient revenue streams to support high quality City services and capacity to invest in needed infrastructure and City facilities. In light of recent and ongoing changes related to the COVID-19 pandemic, the City seeks to continue to build on past successes, even though unplanned, to manage expected tax revenue impacts, and to develop strategies for continued economic success into the future.

Powell is at the nexus of or immediately adjacent to areas that are vibrant and growing, with envisioned or planned improvements and potential infrastructure changes happening all around us, including those outlined within the City of Dublin's Bridge Street Plan and subsequent implementation, and the continued development of The OSU Wexner Medical Center in neighboring suburban communities.

The CIC was incorporated as a 501(c)(3) corporation on Feb. 16, 2010, as allowed by the Ohio Revised Code. The purpose of the Powell CIC is to promote the industrial, commercial, distribution and research development within the City of Powell that will improve the normal growth, employment opportunities and stability of employment within these sectors. The CIC also works to advance the industrial and commercial life of the community and to stabilize the general economy of the area; to develop methods for or to assist in the development of methods to further enhance these purposes; and to furnish assistance to projects and undertakings concerning these purposes.

Economic development planning should result in strategies that capitalize on these ongoing and future opportunities and synergies to continue our evolution and growth as a community rich in character, with a high quality of life and a desire to amplify diversity and inclusion within our City.

## **1.0 PROCESS**

The selected firm will interface with the CIC and City Staff to develop and undertake a process to conduct the Economic Development Strategic Planning work. The process should include:

- Research and data collection and analysis, including economic conditions, demographics and market trends, focused on situating Powell within the region;
- Community outreach and engagement with City and area leadership and resources, including but not limited to local officials, business leaders, the broader business community, real estate professionals, developers, other community leaders, related economic development entities at the local and regional level, local and regional institutions, and the community at large.
- Investigate economic development strategies for discussion, review and refinement with the CIC and City leadership and other collaborating participants through an iterative process that will lead to the development of an Economic Development Strategic Plan.
- Initiate a communication strategy through stakeholder engagement.

## **2.0 OBJECTIVES**

Concurrently with this Strategy, the City of Powell is also undertaking a comprehensive plan update. These plans and strategies will provide a pathway that we can follow to overcome the diverse and challenging situations we face currently with the improvement economic resiliency and aid in the recovery from COVID-19 losses. The CIC seeks a strategy that will provide guidance and serve as a framework for economic development for several years into the future. The consultant will be coordinating with the comprehensive plan update team to ensure that our land use policies support the targeted industries identified in the Strategy.

Responses should consider the priority objectives listed below. The CIC is open to suggestions other than those items listed.

- Developing a CIC assessment strategy, to include vision, mission, best practices and sustainable funding stream.
- Improving the community's economic resiliency and recovery;
- Expanding the partnership with entities, such as the Olentangy School District, and to help improve the pipeline of talent and develop in-demand skills for our employers;
- Attracting and retaining service-based employment;
- Enhance the growth and development of the downtown;
- Enhance Powell quality of life;
- Promoting economic and environmental sustainability.

The selected firm will document and communicate national, regional and local economic development trends and issues impacting the City; gather business statistics and other relevant data; and develop recommend policies, programs and initiatives that will stimulate economic growth, facilitate appropriate development, redevelopment and improvements to the downtown, aid recruitment and retention of businesses, and support the creation of new jobs and related

lifestyle opportunities in the City. Modifications to better meet project objectives may be provided, and will be evaluated as part of reviewing the firm's understanding and proposed approach.

### **3.0 DELIVERABLES**

The consultant will be expected to deliver a completed strategy that contains the following desired components. The CIC is open to suggestions other than those items listed. The CIC will finalize the scope of work with the selected consultant prior to contract authorization. Modifications to better meet project objectives may be provided, and will be evaluated as part of reviewing the firm's understanding and proposed approach. Deliverables must be concise and visual:

#### **Evaluation of Current Conditions and Trends**

- A. An analysis of current economic conditions, demographics, market trends and opportunities, situating Powell within the region. An update to the 2018 *Real Estate Market Study and Strategic Recommendations Analysis in the City of Powell, Ohio* will need to be completed by a qualified real estate research expert in conjunction with this analysis.
- B. An analysis of the City's existing incentive programs; the City's use of existing state and federal programs; develop benchmarks. The future economic development strategic plan will be forward-focused on recommendations for updates to incentive programs, including those needed to attract and retain businesses throughout the City. Analysis of the City's current development tools and policies and effectiveness of those tools and policies; analysis of additional or revised tools and policies that could be leveraged to support desired outcomes;
- C. An analysis of development and redevelopment sites that includes data regarding potential for revenue producing activity, focused on the following City business corridors and areas, as also referenced in the 2015 Community Plan; prioritization analysis of these areas;
  1. Downtown TIF District
  2. Sawmill Parkway Corridor
  3. Western Gateway (including the Columbus Zoo and Aquarium)
  4. Seldom Seen Business Corridor
  5. Sawmill Drive Corridor
  6. North Annexation Area
- D. An evaluation and recommendations for improvements to project review and approval processes that may support and encourage business investment.
- E. A SWOT analysis of the existing economic base(s) and potential future market focuses;

- F. An identification of development and redevelopment opportunities within the City with a focus on the downtown and develop a prioritization ranking relating to various evaluation factors. Using GIS and ESRI technology the successful consultant will build a data base of buildings and sites in the community.
- G. An analysis of inter-jurisdictional opportunities;
- H. Stakeholder and interested party Interviews to gauge interest in the process and potential partnerships for execution.

### **Economic Development Policies and Priorities**

- A. Development of policy statements for the following activities that will guide the development of the future economic development strategic plan:
  - a. Annexation policy;
  - b. Broadband policy;
  - c. Land acquisition policy;
  - d. Community growth and resiliency policy, to include housing growth and sustainability.
- B. Based upon the policy statements, develop and prioritize economic development objects that can be presented to City Council for adoption and become the basis for the final economic development strategic plan.

### **Develop a CIC Assessment and Economic Development Strategy**

- A. Development of a CIC assessment strategy, to include vision, mission, best practices and sustainable funding stream. The successful consultant will use SWOT principles to assess the condition of the CIC and make recommendations for changes that will provide future direction for the CIC;
- B. In-person attendance at monthly CIC meetings.
- C. Identify best practices and benchmark cities and use those to help re-direct current CIC practices;
- D. Provide a clear and communicative final report outlining the process undertaken, discovery of content revealed, and related outcome recommendations, strategies, tools, investments and process updates needed, etc., for wide distribution and use as a guiding document for further future economic development strategy execution activities, including an economic strategic plan;
- E. Development of an RFP/RFQ for an economic development strategic plan, including alignment of economic development goals with City financial needs, projected into the future.

- F. Conduct a staffing study to determine the appropriate level and appropriate location for potential economic development staff (Location: CIC vs. City hire). Develop a job description, from the information found in the staffing study, for a full-time economic development professional to oversee the operation of the CIC and the overall economic development program for the City.
- G. An evaluation existing quality of life issues, to include but not limited to, events, housing availability and costs, public services, education system, crime rate, cultural and recreational activities, parks and other natural amenities, and tourism, and determine how those issues not only effect economic development initiatives but also how they can be enhanced by economic development initiatives.

### **Develop an Implementation Plan**

- A. Assist the CIC in the selection of a consultant to develop a Downtown Master Plan that is based upon the Downtown Development Investment Plan authored by planningNext.
- B. Support and oversee a property annexation strategy. The successful consultant will work with the City to identify specific footprints and areas as targeted opportunities to annex real estate to provide additional parcels for development.
- C. Communicate the need for economic development strategic planning to the community through a proactive communications strategy working with the City of Powell's Communications Department.

### **Project Schedule and Presentation of Community Input Key Findings**

- A. Present key findings from discussions, interviews, surveys, etc. to CIC and City leadership on a routine basis. The Consultant shall prepare and maintain a project schedule that includes periods for public input, reviews, and approvals. This schedule should show the completion date as December 31, 2022.

#### **4.0 SUBMITTAL REQUIREMENTS**

Questions regarding this RFP shall be directed to:

Jeffrey S. Tyler, AIA

Assistant City Manager / Community Development Director

E: [jtyler@cityofpowell.us](mailto:jtyler@cityofpowell.us)

P: 614.885.5380

Questions shall be submitted in writing via email, by 1pm, Tuesday, March 15, 2022.

Answers will be provided in writing via email, by 4p, Friday, March 18, 2022, to those firms who have indicated their intent to respond to this RFP to the City. Such indications of intent are due no later than 1pm, Tuesday, March 15, 2022 via email to Jason Nahvi, with subject line "Powell ED Consultant RFP Notice of Intent to Respond" in the subject line.

Responses to this RFP shall be submitted to the City of Powell CIC, to the attention of:

Jason Nahvi

HR Business Partner

E: [jnahvi@cityofpowell.us](mailto:jnahvi@cityofpowell.us)

**Submissions should be made via email, in a single, combined PDF.**

Please be advised that failure to comply with the following criteria may be grounds for disqualification:

1. Receipt of submittal by the specified date and time.
2. Adherence to maximum page limits (this includes the proposal and cover letter).
3. Prohibition against contact or communication with any CIC member, elected official, representative, or employee of the City of Powell regarding this solicitation or the type of work contemplated therein, except as noted elsewhere within this RFP.
4. Failure to complete and include Attachments A and B.

Submittals are not returnable and will become the property of the CIC.

Please be advised that once submitted, they become "public record" and are available to all for inspection and copying, upon request.



## **Proposal Format**

- A. One PDF copy, not exceeding 5MB, shall be provided.
- B. Consultant shall limit the proposal to no more than ten (10) total pages including the cover letter. The 10 pages does not include the proposal cover, table of contents, required attachment forms, or section dividers. Pages may be configured horizontally or vertically and shall be formatted to print on 8.5 x 11 letter sized paper without scaling, with minimum 1/2-inch margins and minimum 10 point text.
- C. The proposal shall be accompanied by a one-page cover letter that shall be bound with the proposal as the first page after the front cover.

## **Evaluation Criteria**

- A. Consultant's experience and past performance on similar projects (35 points)
- B. Project team background and qualifications (20 points)
- C. Understanding of the project, approach, timeline and cost (30 points)
- D. Quality, visual presentation and accuracy of RFP response (15 points)

## **Selection Process**

Proposals will be evaluated by a committee comprised of the following CIC and City personnel:

- CIC Members
- Assistant City Manager / Community Development Director
- Director of Finance
- Other City leadership as determined

Received responses are anticipated to be short-listed, followed by interviews (which may be virtual, at the CIC's sole discretion) and consultant selection. Once a preferred consultant has been selected, final scope, timeline and cost negotiations will be undertaken with the selected firm. If an agreement cannot be reached with the preferred firm, the CIC retains the right to cease negotiations and to move on to the consultant identified as next most preferred, and so on until an acceptable agreement is reached.

No guarantee of award is made by way of this solicitation. The CIC reserves it's right to award the work described herein in whole or in part, based upon available funds and other criteria as determined by the CIC in its sole discretion.

## **5.0 TERMS AND CONDITIONS**

### **A. LEGAL STATUS OF RESPONDENT**

The CIC requires that the consultant complete a Legal Status of Respondent form. A contract may not be awarded to the selected consultant unless and until the City's Law Director and Director of Finance have reviewed the Legal Status form and determined that information provided deems the respondent eligible to contract for services with the CIC. A copy of the Legal Status of Respondent Form is attached and shall be included with the RFP response.

### **B. CONFLICT OF INTEREST DISCLOSURE**

The CIC requires that the consultant complete a Conflict of Interest Disclosure form. A contract may not be awarded to the selected consultant unless and until the City's Law Director and Director of Finance have reviewed the Disclosure form and determined that no conflict exists under applicable federal, state, or local law or administrative regulation. Not every relationship or situation disclosed on the Disclosure Form may be a disqualifying conflict. Depending on applicable law and regulations, some contracts may be awarded on the recommendation of the Law Director and the Director of Finance after full disclosure, where such action is allowed by law, if demonstrated competitive pricing exists and/or it is determined the award is in the best interest of the CIC and the City. A copy of the Conflict of Interest Disclosure Form is attached and shall be included with the RFP response.

### **C. TYPE OF CONTRACT**

A sample of the Professional Services Agreement is included as Exhibit One. Those who wish to submit a proposal to the CIC are required to review this sample agreement carefully. The CIC will not entertain changes to its Professional Services Agreement.

The CIC reserves the right to award the total proposal, to reject any or all proposals in whole or in part, and to waive any informality or technical defects if, in the CIC's sole judgment, the best interests of the CIC will be so served. This RFP and the selected consultant's response thereto, shall constitute the basis of the scope of services in the contract by reference.

### **D. ADDITIONAL PROVISIONS**

1. Good Faith. This RFP has been compiled in good faith. The information contained within is selective and subject to updating, expansion, revision and amendment by the CIC.
2. Equal Employment Opportunity. The CIC and the City of Powell do not discriminate in employment opportunities or practices based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, genetic disposition, or any other characteristic protected by law.
3. Not an Award. Recipients of this RFP are advised that nothing stated herein, or any part thereof, or any communication during the evaluation and selection process, shall be construed as constituting, offering or awarding a contract, representation or agreement of any kind between the CIC and any other party, save for a formal written contract, properly executed by both parties.

4. Property of the CIC. Responses to this RFP will become the property of the CIC, and will form the basis of negotiations of an agreement between the CIC and the apparent successful Consultant.

5. IRS Form W-9. The selected consultant will be required to provide the CIC an IRS form W9.

6. Errors in Proposals. The CIC will not be liable for any errors in Consultant proposals.

7. CIC not Liable for Costs. The CIC is not liable and will not be responsible for any costs incurred by any Consultant(s) for the preparation and delivery of the RFP responses, nor will the CIC be liable for any costs incurred prior to the execution of an agreement, including but not limited to, presentations by RFP finalists to the CIC. The liability of the CIC is limited to the terms and conditions outlined in the Agreement. By submitting a proposal, consultant agrees to bear all costs incurred or related to the preparation, submission, and selection process for the proposal.

8. Reservation of Rights

a. The CIC reserves the right in its sole and absolute discretion to accept or reject any or all proposals, or alternative proposals, in whole or in part, with or without cause.

b. The CIC reserves the right to waive, or not waive, informalities or irregularities in terms or conditions of any proposal if determined by the CIC to be in its best interest.

c. The CIC reserves the right to request additional information from any or all consultants.

d. The CIC reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested within RFP.

e. The CIC reserves the right to determine whether the scope of the project will be the entire scope described in the RFP, a portion of the scope, or a revised scope.

f. The CIC reserves the right to select one or more consultants to perform services and to award the entire scope or any portion of the scope to such consultant(s) in the CIC's sole discretion.

g. The CIC reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the consultant of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted.

h. The CIC reserves the right to disqualify proposals that fail to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents outlined within RFP.

i. The CIC reserves the right to make an award without further discussion of the proposal submitted, pending execution of final contracting forms.

j. The CIC reserves the right to terminate or delay this RFP, the RFP process and/or the program which is outlined within this RFP at any time.

**Attachments:**

- ATTACHMENT A: LEGAL STATUS OF RESPONDENT
- ATTACHMENT B: CONFLICT OF INTEREST DISCLOSURE
- EXHIBIT ONE: SAMPLE PROFESSIONAL SERVICES AGREEMENT

**ATTACHMENT A: LEGAL STATUS OF RESPONDENT**

(The Respondent shall fill out the appropriate provision and strike out the remaining ones.)

The Respondent is:

- A corporation organized and doing business under the laws of the State of \_\_\_\_\_, for whom \_\_\_\_\_ bearing the office title of \_\_\_\_\_, whose signature is affixed to this proposal, is authorized to execute contracts on behalf of respondent.
- A limited liability company doing business under the laws of the State of \_\_\_\_\_, for whom \_\_\_\_\_ bearing the office title of \_\_\_\_\_, whose signature is affixed to this proposal, is authorized to execute contract on behalf of the LLC.
- A partnership organized under the laws of the State of \_\_\_\_\_ and filed with the County of \_\_\_\_\_, whose members are (attach list including street and mailing address for each.)
- An individual, whose signature with address, is affixed to this RFP.

Respondent has examined the basic requirements of this RFP and its scope of services, including all Addendum (if applicable) and hereby agrees to offer the services as specified in the RFP.

Signature Date

Name and Title

Company

Address

Contact Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**ATTACHMENT B: CONFLICT OF INTEREST DISCLOSURE**

All Consultants interested in conducting business with the City of Powell CIC must complete and return the Consultant Conflict of Interest Disclosure Form in order to be eligible to be awarded a contract. Please note that all Consultants are subject to comply with the CIC’s conflict of interest policies as stated within the certification section below.

If a Consultant has a relationship with a CIC official or City of Powell employee, an immediate family member of a CIC official or City of Powell employee, the Consultant shall disclose the information required below.

- 1. No CIC official or employee or City employee’s immediate family member has an ownership interest in Consultant’s company or is deriving personal financial gain from this contract.
- 2. No retired or separated CIC official or City employee who has been retired or separated from the CIC or the City for less than one (1) year has an ownership interest in Consultant’s Company.
- 3. No CIC official or City employee is contemporaneously employed or prospectively to be employed with the Consultant.
- 4. Consultant hereby declares it has not and will not provide gifts or hospitality of any dollar value or any other gratuities to any CIC official or City employee or elected official to obtain or maintain a contract.
- 5. Please note any exceptions below:

**Conflict of Interest Disclosure\***

Name of CIC official, City of Powell employees, elected officials or immediate family members with whom there may be a potential conflict of interest.

( ) Relationship to employee

\_\_\_\_\_

( ) Interest in Consultant’s company

( ) Other (please describe in box below)

\*Disclosing a potential conflict of interest does not disqualify Consultants. In the event Consultants do not disclose potential conflicts of interest and they are detected by the CIC, Consultant will be exempt from doing business with the CIC.

**I certify that this Conflict of Interest Disclosure has been examined by me and that its contents are true and correct to my knowledge and belief and I have the authority to so certify on behalf of the Consultant by my signature below:**

**Consultant Name Consultant Phone Number**

**Signature of Consultant Authorized**

**Representative**

**Date**

**Printed Name of Consultant Authorized**

**Representative**

**EXHIBIT ONE**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

*If a contract is awarded, the selected Consultant(s) will be required to adhere to a set of general contract provisions which will become a part of any formal agreement. These provisions are general principles which apply to all service providers to the CIC and the City of Powell. The required provisions are:*

SAMPLE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN \_\_\_\_\_

AND THE CITY OF POWELL CIC FOR \_\_\_\_\_

The City of Powell Community Improvement Corporation, an Ohio 5013C, having its offices at 47 Hall Street, Powell, Ohio 43065 ("CIC"), and

\_\_\_\_\_

(“Consultant”)

a(n)

(State where organized) (Partnership, Sole Proprietorship, or Corporation)

with its address at

\_\_\_\_\_

agree as follows, on this day of , 20\_\_.

(date) (month)

The Consultant agrees to provide services to the CIC under the following terms and conditions:

**I. DEFINITIONS**

Administering Department means \_\_\_\_\_.

Contract Administrator means \_\_\_\_\_, acting personally or through any assistants authorized by the CIC Chair.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Consultant under this Agreement

Project means \_\_\_\_\_.

(Project Name)

**II. DURATION**

A. This Agreement shall become effective on \_\_\_\_\_, 20\_\_\_\_, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for elsewhere in this Agreement.

**III. SERVICES**

**A.** The Consultant agrees to provide

\_\_\_\_\_

(Type of Service)

("Services") in connection with the Project as described in the attached exhibit(s). The CIC retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

B. Services under this Agreement shall be of the highest level of quality and shall comply with the standard of care applicable to persons qualified to perform and regularly rendering this type of service in the locality of the Project. Determination of acceptable quality shall be made solely by the Contract Administrator.

C. The Consultant shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the CIC (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### IV. INDEPENDENT CONTRACTOR

A. The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

#### V. COMPENSATION OF CONSULTANT

A. The Consultant shall be paid in the manner set forth in the attached Exhibits. Payment shall be made monthly, unless another payment term is specified therein, following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator.

B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.

C. The Consultant shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the CIC may verify invoices submitted by the Consultant. Such records shall be made available to the CIC upon request and submitted in summary form with each invoice.

#### VI. INSURANCE/INDEMNIFICATION

A. The Consultant shall procure and maintain during the life of this contract such insurance policies, including those set forth in exhibits associated with the original solicitation for referenced work, as will protect itself and the CIC from all claims for bodily injuries, death or property damage which may arise

under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Consultant, any sub-consultant or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Consultant shall provide to the CIC, before the commencement of any work under this contract, documentation satisfactory to the CIC demonstrating it has obtained the policies and endorsements required.

B. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Ohio and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating



Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the CIC.

C. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold the CIC, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Consultant or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the CIC's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

## VII. WARRANTIES BY THE CONSULTANT

A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the highest level of quality performed and the standard of care applicable to persons regularly rendering this type of service in the locality of the Project.

B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to properly perform the Services specified in this Agreement.

C. The Consultant warrants that it has available, or will engage, at its own expense, sufficiently trained and competent employees to provide the Services specified in this Agreement.

D. The Consultant warrants that it is not, and shall not become overdue or in default to the CIC for any contract, debt, or any other obligation to the CIC including real and personal property taxes.

E. The Consultant warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Consultant to induce any other Consultant to submit or not to submit a proposal for the purpose of restricting competition.

## VIII. OBLIGATIONS OF THE CIC

A. The CIC agrees to give the Consultant access to the Project area and other CIC and City owned properties as agreed between the parties per negotiated work access plans and as required to perform the necessary Services under this Agreement.

B. The CIC shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

## IX. ASSIGNMENT

A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the CIC. Notwithstanding any consent by the CIC to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the CIC.

B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

## X. TERMINATION OF AGREEMENT

A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to

terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.

B. The CIC may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Consultant, except the obligation to pay for Services actually and satisfactorily performed under the Agreement before the termination date.

C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the CIC to effect continued payment under this Agreement are not appropriated or otherwise made available, the CIC shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Consultant. The Contract Administrator shall give Consultant written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

D. The provisions of Articles VI and VII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Consultant's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

#### XI. REMEDIES

A. This Agreement does not, and is not intended to, impair, divest, derogate, or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the CIC.

B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by the CIC of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.

C. Absent a written waiver, no act, failure, or delay by the CIC to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver by the CIC of any term, condition, or provision of this Agreement. No waiver by the CIC shall subsequently effect its right to require strict performance of this Agreement.

#### XII. NOTICE

A. All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

B. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below.

C. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

**If Notice is sent to the CONSULTANT, it shall be addressed and sent to:**

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(Consultant Representative Name)

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(Consultant Representative Address)

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(Consultant Representative Email) (Consultant Representative Phone)

**If Notice is sent to the CIC, it shall be addressed and sent to:**

City of Powell Community Improvement Corporation

Andrew D. White

City Manager

Email: [awhite@cityofpowell.us](mailto:awhite@cityofpowell.us)

Phone: 614-885-5380

### XIII. CHOICE OF LAW AND FORUM

A. This Agreement will be governed and controlled in all respects by the laws of the State of Ohio. The parties submit to exclusive jurisdiction and venue in the Common Pleas Court for Delaware County, Ohio, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement.

### XIV. OWNERSHIP OF DOCUMENTS

A. Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to and become the property of the CIC. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Consultant as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the CIC without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the CIC shall have a recognized proprietary interest in the work product of the Consultant.

B. Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Consultant even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The CIC's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

### XV. CONFLICTS OF INTEREST OR REPRESENTATION

A. Consultant certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

B. Consultant agrees to advise the CIC if Consultant has been or is retained to handle any matter in which its representation is adverse to the CIC. The CIC's prospective consent to the Consultant's representation of a client in matters adverse to the CIC, as identified above, will not apply in any instance where, as the result of Consultant's representation, the Consultant has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Consultant, could be used in any such other matter by the other client to the material disadvantage of the CIC. Each matter will be reviewed on a case by case basis.

#### XVI. SEVERABILITY OF PROVISIONS

A. Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

#### XVII. EXTENT OF AGREEMENT

A. This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the CIC and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Consultant and the CIC. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

FOR CONSULTANT FOR THE CITY OF POWELL COMMUNITY IMPROVEMENT CORPORATION

By \_\_\_\_\_ By \_\_\_\_\_

(Consultant Signature)

Jim Hrivnak, Chair

\_\_\_\_\_

(Consultant Name)

\_\_\_\_\_

(Position)

\_\_\_\_\_

(Date)

Approved as to substance:

By \_\_\_\_\_

Andrew D White,

City Manager

Approved as to form:

By \_\_\_\_\_

Yazan S. Ashrawi

CIC Attorney