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CITY OF FORT WORTH
CITY SECRETARY

CITY SECRETARY
CONTRACT NO. 53146

PROFESSIONAL SERVICES AGREEMENT

Del Carmen Consulting, LLC

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into by and between the **CITY OF FORT WORTH** ("City"), a Texas home rule municipal corporation, acting by and through David Cooke, its duly authorized City Manager, and **Del Carmen Consulting, LLC** ("Consultant"), an LLC, each referred to as a "party" and collectively referred to as the "parties."

AGREEMENT DOCUMENTS:

The Agreement documents shall include the following:

1. This Professional Services Agreement;
2. Exhibit A – Scope of Services; and

Exhibit A is attached hereto hereby made a part of this Agreement for all purposes. In the event of any conflict between the terms and conditions of Exhibit A and the terms and conditions set forth in the body of this Agreement, the terms and conditions of the body of this Agreement shall control.

1. SCOPE OF SERVICES.

Consultant, in concert with Dr. Theron L. Bowman, shall direct a panel of experts to review and identify patterns and practices related to police interactions with the public during investigative stops, searches, arrests, and use of force incidents as well as examine police policies, operational practices, training, documentation, accountability systems, corrective and reporting procedures, and technology application, and to prepare a final report and set of police reform recommendations to the City, as more specifically set forth in Exhibit "A" (the "Services").

2. TERM.

This Agreement shall commence on the date as of which it has been executed by both parties ("Effective Date") and shall expire on the earlier of (i) completion of all Services hereunder or (ii) September 30, 2020 ("Expiration Date"), unless terminated earlier in accordance with this Agreement (the "Term"). This Agreement may not be extended or amended unless mutually agreed in writing by both the City and Consultant.

3. COMPENSATION.

City shall pay Consultant \$250 per hour for Services rendered under this Agreement. Total compensation under this Agreement may not exceed an aggregate of \$100,000.00, including any travel-related or other actual expenses. Consultant will submit monthly invoices to the City outlining, on a daily basis, the specific Services provided in the previous month, together with a detailed description of such Services and the amount of time each day spent on such Services. Invoices will be due and payable by the City within 30 calendar days of receipt. Consultant shall not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless City first approves such expenses in writing.

4. **TERMINATION.**

4.1. **Written Notice.** City or Consultant may terminate this Agreement at any time and for any reason upon provision of written notice to the other.

4.2. **Non-appropriation of Funds.** In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3. **Duties and Obligations of the Parties.** In the event that this Agreement is terminated prior to the Expiration Date, City shall pay Consultant for services actually rendered up to the effective date of termination. Upon termination of this Agreement for any reason, Consultant shall provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Consultant has received access to City Information or data as a requirement to perform services hereunder, Consultant shall return all City provided data to City in a machine readable format or other format deemed acceptable to City.

5. **DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

5.1. **Disclosure of Conflicts.** Consultant hereby warrants to City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to City in writing.

5.2. **Confidential Information.** Consultant, for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by City ("City Information") as confidential and shall not disclose any such information to a third party without the prior written approval of City.

5.3. **Unauthorized Access.** Consultant shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Consultant shall, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and shall fully cooperate with City to protect such City Information from further unauthorized disclosure.

6. **RIGHT TO AUDIT.**

Consultant agrees that City shall, until the expiration of three (3) years after final payment under this contract, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Consultant involving transactions relating to this Agreement at no additional cost to City. Consultant agrees that City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Consultant reasonable advance notice of intended audits.

7. **INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, consultants and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant. It is further understood that City shall in no way be considered a Co-employer or a Joint employer of Consultant or any officers, agents, servants, employees or contractor and subcontractors. Neither Consultant, nor any officers, agents, servants, employees or subcontractors of Consultant shall be entitled to any employment benefits from City. Consultant shall be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees or subcontractors.

8. **LIABILITY AND INDEMNIFICATION.**

8.1 ***LIABILITY - CONSULTANT SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF CONSULTANT, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

8.2 ***GENERAL INDEMNIFICATION - CONSULTANT HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO CONSULTANT'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF CONSULTANT, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

8.3 ***INTELLECTUAL PROPERTY INDEMNIFICATION*** – Consultant agrees to defend, settle, or pay, at its own cost and expense, any claim or action against City for infringement of any patent, copyright, trade mark, trade secret, or similar property right arising from City's use of the software and/or documentation in accordance with this Agreement, it being understood that this agreement to defend, settle or pay shall not apply if City modifies or misuses the software and/or documentation. So long as Consultant bears the cost and expense of payment for claims or actions against City pursuant to this section, Consultant shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect City's interest, and City agrees to cooperate with Consultant in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against City for infringement arising under this Agreement, City shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however,

Consultant shall fully participate and cooperate with City in defense of such claim or action. City agrees to give Consultant timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, City's assumption of payment of costs or expenses shall not eliminate Consultant's duty to indemnify City under this Agreement. If the software and/or documentation or any part thereof is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Consultant shall, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the software and/or documentation; or (b) modify the software and/or documentation to make it non-infringing, provided that such modification does not materially adversely affect City's authorized use of the software and/or documentation; or (c) replace the software and/or documentation with equally suitable, compatible, and functionally equivalent non-infringing software and/or documentation at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Consultant terminate this Agreement, and refund all amounts paid to Consultant by City, subsequent to which termination City may seek any and all remedies available to City under law.

9. **ASSIGNMENT AND SUBCONTRACTING.**

9.1 **Assignment.** Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee shall execute a written agreement with City and Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. Consultant and the assignee shall be jointly liable for all obligations of Consultant under this Agreement prior to the effective date of the assignment.

9.2 **Subcontract.** If City grants consent to a subcontract, any such subcontractor shall execute a written agreement with Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of Consultant under this Agreement as such duties and obligations may apply. Consultant shall provide City with a fully executed copy of any such subcontract.

10. **COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

Consultant agrees that in the performance of its obligations hereunder, it shall comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

11. **NON-DISCRIMINATION COVENANT.**

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY CONSULTANT, ITS PERSONAL REPRESENTATIVES, ASSIGNS, SUBCONTRACTORS OR SUCCESSORS IN INTEREST, CONSULTANT AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

12. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

<p>To CITY:</p> <p>City of Fort Worth Attn: David Cooke, City Manager 200 Texas Street Fort Worth, TX 76102-6314</p> <p>With copy to Fort Worth City Attorney's Office at same address</p>	<p>To CONSULTANT:</p> <p>Del Carmen Consulting, LLC Dr. Alex del Carmen 3122 Westwood Drive Arlington, Texas 76012</p> <p>Email: dcconsulting@sbcglobal.net</p>
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13. SOLICITATION OF EMPLOYEES.

Neither City nor Consultant shall, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement, without the prior written consent of the person's employer. Notwithstanding the foregoing, this provision shall not apply to an employee of either party who responds to a general solicitation of advertisement of employment by either party.

14. GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

15. NO WAIVER.

The failure of City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

17. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. **FORCE MAJEURE.**

City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

19. **HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only, shall not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

20. **REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or Exhibits A and B.

21. **AMENDMENTS/ MODIFICATIONS/ EXTENSIONS.**

No amendment, modification, or extension of this Agreement shall be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.

22. **ENTIRETY OF AGREEMENT.**

This Agreement, including Exhibits A and B, contains the entire understanding and agreement between City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

23. **COUNTERPARTS.**



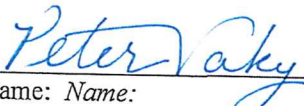
This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

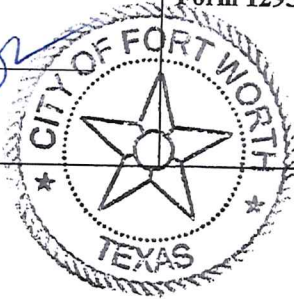
IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the later date indicated below.

(signature page follows)

ACCEPTED AND AGREED:


CITY OF FORT WORTH:

<p>By: <u></u> Name: David Cooke Title: City Manager</p> <p>Date: <u>12-4-19</u></p> <p>ATTEST:</p> <p>By: <u></u> Name: Mary J. Kayser Title: City Secretary</p>	<p>APPROVED AS TO FORM AND LEGALITY:</p> <p>By: <u></u> Name: Name: Title: Assistant City Attorney</p> <p>CONTRACT AUTHORIZATION:</p> <p>Resolution No.: <u>5148-11-2019</u></p> <p>Form 1295: None Required</p>
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CONSULTANT:

DR. ALEX DEL CARMEN,
Del Carmen Consulting, LLC

By: 

Date: 11/24/19

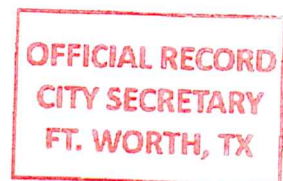


EXHIBIT "A"

Police Policies Review Scope of Work

In anticipation of the hiring of the Police Monitor, who will be responsible for leading the activities and operations of the Police Oversight Office, and in response to recent officer involved shootings, the City Manager will engage a third-party review of Police Department policies and practices as outlined below. This review will be conducted by national experts with knowledge and experience in police applications of procedural justice, biased based policing, investigative best practices and use of force.

Phase I

Goal: Identify patterns and practices related to police interactions with the public during investigative stops, searches, arrests, and use of force incidents.

- A review and report of the evolution/changes of Police policies related to Stops, searches, arrests, Use of Force, Implicit Bias, De-escalation and Procedural Justice from 2014 to 2019.
- Detailed review of current Stops, searches, arrests, and Use of Force related policies and practices to include training, documentation, accountability, audit, corrective and reporting procedures and technology applications with recommendations on potential improvements.
- Detailed review of policies, training and accountability systems related to achieving biased free policing with recommendations on potential improvements.
- Detailed review of current De-escalation policies, practices and training with recommendations on potential improvements.
- Initiation of community engagement program, conduct community listening sessions, engage community leaders from diverse communities.

Phase II

Goal: Review overall other police policies, general orders and practices related to interactions with the public and citizens to identify opportunities to improve trust and confidence in the police department. These should include Community Policing and Engagement, Misconduct complaints (The apparatus for receiving and acting on internal and external police complaints), Recruitment, Hiring, and Promotions, Critical Incident Interactions (Mental Health) and Interactions with Youths.

- A review of training associated with traffic stops and other more routine police- community interactions. Provide recommendations for improvement.
- A review of accountability and discipline related procedures.
- Our reach throughout the Ft. Worth community to engage diverse community members and develop confidence in the recommendations and reform process.
- Publish report of conclusions and recommendations.