

STATE OF TEXAS           §  
  §       **AGREEMENT FOR PROFESSIONAL SERVICES**  
COUNTY OF TARRANT §

This agreement (“Agreement”) is made by and between the City of Keller, Texas (“City”) and 360 Lifeview, LLC (the “Professional”) acting by and through their authorized representatives.

**Recitals:**

**WHEREAS**, the City desires to engage the services of Professional as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Professional desires to render professional services for the City in accordance with the terms and conditions set forth in this Agreement;

**WHEREAS**, Professional hereby agrees to provide the City with Digital Photography, Videography and Marketing services in accordance with RFP/Bid # 19-005 dated October 28, 2018, and in accordance with the prices set forth in the RFP Response dated November 9, 2018.

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**Article I**  
**Term**

1.1 This term of this Agreement shall be effective for the remainder of the current fiscal year, beginning on December 19, 2018 and ending on September 30, 2019, with the option of renewal for four (4) additional one (1) year periods.

1.2 Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In the event of such termination the Professional shall have thirty (30) days to complete any work then in progress; and shall deliver to the City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, digital analytics, videos, photographs or other items prepared by the Professional in connection with this Agreement. In the event of such termination, the Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

## **Article II**

### **Scope of Services**

2.1 The Professional shall provide the services set out in the Scope of Services attached as Exhibit “A” and as prepared in the attached RFP as Exhibit “B.”

2.2 The parties acknowledge and agree that any and all opinions provided by the Professional represent the best judgment of the Professional.

2.3 All finished work prepared by the Professional shall remain the property of the City.

2.4 In case of conflict between this agreement and other documents enumerated as forming a part of this Agreement, the provisions of this Agreement shall govern.

2.5 All written modifications to Agreement signed by both parties and City issued addenda to Bid Specifications shall take precedence over all sections referenced therein, the document with the latest date of issuance or execution controlling.

## **Article III**

### **Compensation**

3.1 The City shall compensate the Professional for the services by payment of a fee as set forth in the RFP response set forth in Exhibit “B”. Unless otherwise provided herein, payment to the Professional shall be bi-weekly based on the Professional’s bi-weekly and monthly progress report and detailed bi-weekly itemized statement for services that shows the names of the Professional’s employees, agents, contractors performing the work, the time worked, the actual work performed the rates charges for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. The bi-weekly invoices shall be submitted at the 1<sup>st</sup> and 15<sup>th</sup> day of each calendar month. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

3.2 Unless otherwise provided herein, the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges, unless otherwise provided herein.

3.3 Professional recognizes that this Agreement shall commence upon the day first written above and continue in full force and effect until termination in accordance with its provisions. Professional and City herein recognize that the continuation of any agreement after the close of any given fiscal year of the City of Keller, which fiscal year ends on September 30<sup>th</sup> of each year, shall be subject to Keller City Council approval. In the event that the Keller City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

## **Article IV**

### **Devotion of Time; Personnel; and Equipment**

4.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

4.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Professional.

4.3 The Professional shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

## **Article V**

### **Miscellaneous**

5.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

5.2 Assignment. The Professional may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

5.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Tarrant County, Texas.

5.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

5.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions, and the Agreement

shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.7 Independent Contractor. It is understood and agreed by and between the parties that the Professional in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional 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 Agreement.

5.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile 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 intended for City:  
Attn: Karla Parker  
City of Keller  
P.O. Box 770  
1100 Bear Creek Parkway  
Keller, Texas 76244

With Copy to:  
Stan Lowry  
Boyle and Lowry  
4201 Wingren Drive  
Suite 108  
Irving, Texas 75062

If intended for Professional:

Attn: Luke Robinson  
360 Lifeview, LLC.  
5121 Senator Drive  
Fort Worth, Texas

5.9 Counterparts. This Agreement 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.

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

5.11 Indemnification.

- (a) Professional shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Professional and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Professional, its officers, agents, employees, subcontractors, licensees; invitees or any other third parties for whom Professional is legally responsible (hereinafter "Claims"). Professional is expressly required to defend City against all such Claims.
- (b) In its sole discretion, City shall have the right to approve defense counsel to be retained by Professional in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Professional's obligation to defend City or as a waiver of Professional's obligation to indemnify City pursuant to this Agreement. Professional shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Professional fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Professional shall be liable for all costs incurred by City.

5.12 Audits and Records. The Professional agrees that during the term hereof the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Professional's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

5.13 Conflicts of Interests. The Professional represents that no official or employee of the City has any direct or indirect pecuniary interest in this Agreement.

5.14 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 Dollars per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement; and (3)

statutory Worker's Compensation Insurance covering all of Professional's employees involved in the provision of services under this Agreement.

- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- (c) All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "B" by AM Best or other equivalent rating service, or approved by the City Risk Manager. (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

City of Keller, Texas

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**City's Acknowledgment**

**State of Texas**       §

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**County of Tarrant**   §

      This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, City Manager of the City of Keller, Texas, on behalf of said  
municipality.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:\_\_\_\_\_

**Professional's Acknowledgment**

**State of Texas**       §

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**County of Tarrant**   §

      This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of said  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:\_\_\_\_\_

## **EXHIBIT “A” SCOPE OF SERVICES**

General details for the Scope of Services are outlined in the RFP response, attached as “Exhibit B.” Additional details regarding services to be provided as a part of the project scope are outlined below.

- 360 Lifeview, LLC shall provide all services as outlined in the attached RFP, including, but not limited to those provided as a part of the Google Business View Program and any existing or future iterations of that program.
- All documents to be provided to each business, whether they elect to participate or not, shall be approved by both 360 Lifeview, LLC and the City. The City shall be provided all copyrights and copies of all documents, photos, videos and applicable credentials in order to view and be retained for City branding and marketing purposes upon completion of each business specific partition of the project.
- 360 Lifeview, LLC shall compose an applicable services agreement, copyright release and liability release which shall be provided to each business which elects to receive the services of this project. A business which elects to receive these services must indicate via a signed statement to be outlined in the above mentioned documents.
- A business which declines the services of this project shall indicate their intention via a signed declination statement, to be composed by 360 Lifeview, LLC.
- 360 Lifeview, LLC and City staff shall conduct a pre-project survey of all applicable businesses in order to measure interest and prioritize the project schedule.
- If requested by the City, 360 Lifeview, LLC shall utilize surveyed businesses as a testbed for the general rollout of the project.
- Information and access to a shared schedule shall be provided to the City at the commencement of the contract period by 360 Lifeview, LLC.
- 360 Lifeview, LLC shall provide for the minimum requisite access to view, report on and analyze data profiles for each business participating in the project for as long as said business is in operation.
- Lifeview 360, LLC shall conduct training sessions for Google services on a monthly basis, on a variety of topics. 360 Lifeview, LLC shall actively solicit participation and attendance of businesses for training on the selected training topics.
- 360 Lifeview, LLC shall provide an exit survey to each participating business, upon completion, for the services provided to that business.
- At the end of the contract period, any business which has previously declined services shall have their public access photographed which 360 Lifeview, LLC shall charge the City at a rate of \$37.50 per business for one exterior panoramic photograph.



**EXHIBIT “B”  
RFP RESPONSE**