



CITY OF BALCONES HEIGHTS, TEXAS

REQUEST FOR QUALIFICATIONS MUNICIPAL ENGINEERING SERVICES

PROPOSED AWARD SCHEDULE

August 27, 2019	Issue Request for Qualifications
September 10, 2019	Deadline for Questions
September 24, 2019	SOQs Submittal Deadline
October 1, 2019	Initial Evaluations Complete and results are passed to City Council for review for the October 14, 2019 City Council Work Session.
October 14, 2019	City Council Interviews Prospective Firms
October 28, 2019	City Administrator presents recommendations to City Council who selects firm(s) and authorizes City Administrator to negotiate contract(s).
November 11, 2019	Contract Negotiation and Execution Deadline
November 18, 2019	Council Approves Contract(s)

Balcones Heights: The Miracle Mile

3300 Hillcrest Drive – Balcones Heights, Texas 78201

(210) 957-3000 – www.bhtx.gov

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**CITY OF BALCONES HEIGHTS
MUNICIPAL ENGINEERING
SERVICES REQUEST FOR
QUALIFICATIONS**

I. INTRODUCTION AND PURPOSE OF REQUEST

The City of Balcones Heights located in Bexar County, hereinafter referred to as “the City”, is soliciting Statement of Qualifications from engineering firms, hereinafter referred to as “the Firm” or “City Engineer”, which have five (5) years or more of comprehensive experience in providing municipal engineering services as outlined in the SCOPE OF SERVICES section of this request.

On an on-going basis and as subject to contract renewal terms as defined by the City, the City intends to have the Firm selected function as the “City Engineer” to review proposed commercial and residential development plans in order to determine compliance with applicable laws and ordinances implemented or adopted by the City, and also to function as a consultant to the City in development matters. The City further intends to have the Firm design and/or monitor the construction of municipal projects, including roadway/street, water, storm water, and drainage as well as a variety of other projects. The services requested will require the Firm to be licensed to practice engineering in the State of Texas and must also employ Professional Engineers licensed in the state of Texas. The City reserves the right to select an engineer other than the designated City engineer on a specific project basis as determined by the City Council to be in the best interest of the City.

II. GENERAL INFORMATION

The City of Balcones Heights is a small community incorporated in 1948 of 3,200 people and covering 0.7 square miles. The city is located within metropolitan San Antonio, Texas. The city is located at the northwest side of San Antonio at the intersection of I-10 and Loop 410.

Balcones Heights is governed by an elected Mayor and a five-member City Council elected to two-year overlapping terms. The firm selected would work extensively with the Community Development and Administration Departments. The City’s annual total budget is approximately \$9.4 million.

The City has the following departments: Administration, Community Development, Police, Fire, Economic Development, and Municipal Court. The City is serviced by the San Antonio Water System for water and wastewater. The City’s electric utility is provided entirely by CPS.

The City Council appoints the City Administrator to serve as the City’s Chief Administrative Officer. The City Administrator is responsible for the day-to-day operation of the City, including oversight of contracts and contracted staff.

III. SCOPE OF SERVICES

Balcones Heights is searching for a firm that will provide professional contracted services for engineering. The City Engineer will not be an employee of the City of Balcones Heights for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act and the Texas Unemployment Compensation Act. The general work elements are outlined below.

- A. **Plan Review Services:** The selected consulting City Engineer will provide technical review of, and answer inquiries relating to, site plans, subdivision plans, improvement plans, land disturbance plans, and construction plans relating to projects proposed by applicants to be developed in the City to ensure conformance to codes adopted by the City, as well as state and federal laws.
- B. **City Project Design Services:** The selected consulting City Engineer must have the capability to design a full array of public works type projects including transportation infrastructure systems and stormwater management systems in a manner that is functional and cost effective. The selected consulting City Engineer must be able to provide structural / engineering guidance and any necessary design work for municipal structures.
- C. **Environmental Services and Regulatory Agency Interactions:** The selected consulting City Engineer shall be well-versed in regulatory compliance and permitting and be familiar with approval procedures of regulatory agencies including but not limited to the following: Texas Department of Transportation, Texas Department of Agriculture, Texas Water Development Board, Texas Commission on Environmental Quality, Edwards Aquifer Authority, U.S. Army Corps of Engineers, Federal Emergency Management Agency, Federal Highway Administration, United States Environmental Protection Agency. The selected consultant will serve as the city floodplain administrator. Documents and reports mandated by the agencies listed above shall be prepared and submitted by the selected consulting City Engineer.
- D. **Grant Assistance:** The selected consulting City Engineer shall, as requested, complete or assist in the completion of grant applications for City projects.
- E. **Surveying, Easements and Related Services:** The selected consulting City Engineer shall have the capability of performing or subcontracting boundary surveys, topographic surveys, construction staking, prepare easement plats and easement documents, and assist in easement acquisition.
- F. **CAD and GIS Capabilities:** The selected consulting City Engineer shall have computer-aided drafting and geographical information system capabilities upon request.
- G. **Meeting Attendance and Participation:** The selected consulting City Engineer may be expected to attend a variety of City meetings, including, but not limited to, planning and zoning meetings, council meetings, meetings of affected property owners, and meetings with city staff and developers.

- H. **Work Product:** The selected consulting City Engineer will be expected to provide the City with copies of all work products without limitation, which shall include reports, analyses, correspondence, plans, proposals, submittals, schematics, exhibits, drawings and any other documents produced in connection with the consulting relationship with the City in printed form, as well as in electronic form to include portable document format and the root file(s).
- I. **Assignment of Professional Engineer:** The selected consulting City Engineer shall assign to the City a minimum of one (1) staff person who is a Professional Engineer licensed to practice in the State of Texas.
- J. **Responsiveness:** The selected consulting City Engineer must commit to provide services to the City in a timely manner, without unreasonable delays.
- K. **Proximity:** The selected consulting City Engineer must be located within reasonable proximity to the City of Balcones Heights to ensure meeting attendance, meeting coordination and the conveyance of documents when sent via courier.

IV. SUBMISSION OF STATEMENT OF QUALIFICATIONS (SOQ)

- A. All proposals shall be submitted to and all other correspondence shall be directed to:
 - City of Balcones Heights
 - Attention: Delia Sanchez, City Secretary
 - 3300 Hillcrest Drive
 - Balcones Heights, TX 78201
 - Phone: (210) 957-3542
 - Fax: (210) 957-3159
 - Email: dsanchez@bhtx.gov
- B. All proposals must be received no later than 4:00 P.M., on Tuesday, September 24, 2019. Ten (10) copies of all proposals must be provided. The copies shall be sealed and clearly identified with 'City Engineer' by the submittal deadline. Neither verbal nor electronic submittals will be accepted or considered valid.
- C. Each proposal shall be signed by the principals of the firm.
- D. All SOQs become the property of City of Balcones Heights upon receipt and will not be returned to the submitter.
- E. Any cost or expense incurred by the FIRM that is associated with the preparation or selection process of the SOQ shall be borne solely by the FIRM.
- F. Inquiries and Interpretations:

Responses to inquiries which directly affect an interpretation or change to this RFQ will be issued in writing by the City staff as an addendum and faxed or mailed to all parties recorded by the City as having received a copy of the RFQ. All such addenda issued by the City prior to the time that proposals are received shall be considered part of the RFQ, and the Respondent shall be required to consider and acknowledge receipt of each

addendum in its Qualifications.

Only those inquires the City replies to by addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.

G. Point of Contact

Respondents shall restrict all contact and questions regarding this RFQ to the individual named below. Questions concerning terms and conditions and technical specifications shall be directed in writing to:

City of Balcones Heights
Attn: Mr. David Harris, City Administrator
3300 Hillcrest Dr.
Balcones Heights TX 78201
Phone: (210) 957-3300 ext. 8
Fax: (210) 957-3159
Email: dharris@bhtx.gov

Respondents or their agents are prohibited from lobbying members of the Balcones Heights City Council members or its staff or consultants on this project. Failure to comply with this clause shall be grounds for rejection of their RFQ as non-responsive.

- H. Firms are prohibited from contacting any City employee (other than the City Secretary or City Administrator), the Mayor, or any City Council representative for the purpose of lobbying to secure this agreement. All requests for information shall be made to the City Administrator.

V. STATEMENT OF QUALIFICATIONS (SOQ) REQUIREMENTS

The ideal firm should have extensive experience in municipal engineering as detailed in the Scope of Services. The qualifications and commitment of the key personnel assigned to this community is critically important in the selection of a firm. Please provide the following in your proposal:

- A. Cover letter and introduction including the name, phone number and email address of the person(s) authorized to represent the company regarding all matters related to the proposal.
- B. A description of the candidate firm, including brief history, number of employees and their disciplines, philosophy regarding client and customer service, location, years in business, biographies of principals, biography of the individual who will be assigned as primary representative to the City, etc.
- C. A statement indicating how the candidate envisions being able to provide services to the City of Balcones Heights and a demonstrated understanding of the high expectations of the City and its residents.
- D. A statement detailing how the firm and its staff are qualified to complete tasks related to the Scope of Services

- E. An organizational chart identifying team members and their areas of responsibility. A description of the history of the firm and description of the personnel in the proposing office.
- F. The names and resumes of the professional staff who will be assigned to this community with a statement committing the aforementioned staff to Balcones Heights.
- G. Listing of current and relevant projects relation to similarities of Balcones Heights.
- H. List of current municipal and related clients for engineering services.
- I. Information regarding the candidate firm's current and projected workload and its ability to meet project schedules and be available for Balcones Heights staff.
- J. Five references (past or current clients). Firms shall provide contact information for at least five municipal client references specifying entity name, address, services provided, contact person, and telephone number.
- K. Firms shall also describe any contracts for services awarded to your firm that have been canceled or terminated for unsatisfactory performance in any respect and a phone number and contact person for that organization. Please also provide a description of any legal proceedings involving your firm related any municipal client or municipal projects that were unresolved or active January 1, 2012, to present.

VI. EVALUATION AND SELECTION

A. Qualification-Based Selection Process

Professional services are procured in accordance with Chapter 2254 of the Texas Government Code, Title 10, Subchapter A, Professional Services. Selection of the most highly qualified respondent will be made on the basis of demonstrated competence and qualifications as determined by the City Council based upon qualifications submitted in response to this RFQ.

The City Administrator, with the assistance of the City's consultant and staff, will evaluate Qualifications based on requirements described in Section V. All qualifications will be evaluated with the highest qualified Respondents being selected to attend a formal interview. The interview will allow the invited Respondents to further discuss their qualifications with City Council and to respond to questions from the City Council. The City Administrator shall make a selection recommendation to City Council in a public meeting. If accepted by City Council the City Administrator will negotiate a contract and return to City Council for award of a contract. The City of Balcones Heights reserves the right to reject any or all proposals, and is not bound to accept the lowest cost proposal if that proposal is contrary to the best interests of the city.

B. Selection of the firms to be interviewed shall be based on the following criteria:

- 1) Firm's Ability. The ability of the firm to provide quality municipal engineering services at a reasonable cost.
- 2) Firm's Experience. The firm's experience with and expertise in municipal

engineering services as listed in the Scope of Services.

- 3) Primary Experience. The experience and qualifications of the firm’s staff that will have primary contact with Balcones Heights staff.
- 4) Timeliness. The firm’s commitment to delivering work on time and within budget.
- 5) Avoidance. The firm’s demonstrated avoidance of personal or organizational conflicts of interest regarding any matters of litigation or otherwise.
- 6) Commitment. The extent of involvement by the firm’s key qualified personnel and the likelihood that key personnel will develop a long term and intimate knowledge of the City’s infrastructure.
- 7) References. The extent to which previous clients have found the firm’s services acceptable.
- 8) Location. Geographical location in relation to the City of Balcones Heights.
- 9) Familiarity and experience with TxDOT, SAWS, CPS, VIA Metropolitan Transit, Bexar County, San Antonio and other State and County agencies and departments that are necessary to collaborate with in carrying out various projects.

VII. PROPOSED AWARD SCHEDULE

Key project planning schedule milestones are:

Date	Activity
August 27, 2019	Issue Request for Qualifications
September 10, 2019	Deadline for Questions
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October 1, 2019	Initial Evaluations Complete and results are passed to City Council for review for the October 14, 2019 City Council Work Session.
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November 11, 2019	Contract Negotiation and Execution Deadline
November 18, 2019	Council Approves Contract(s) <i>Date changed due to Thanksgiving Holidays.</i>

VIII. RESERVATION OF RIGHTS AND CONTRACT REQUIREMENTS

- A. The City reserves the right to select one or no firm in response to this RFQ.
- B. The firm, if selected, will be the firm whose SOQ is deemed most advantageous to the City, as determined by City Council.
- C. The City will require the selected firm to execute a contract, in a form substantially similar to the Attached in Exhibit “A”, to be negotiated with the City, no more than fourteen (14) calendar days after the City gives notice of award. Contract documents are not binding on

the City until reviewed by legal counsel. In the event the parties cannot negotiate and execute a contract within the time specified, the City reserves the right to terminate negotiations with the selected firm and commence negotiations with another firm.

- D. This RFQ does not commit the City to enter into a Contract, award any services related to this RFQ.
- E. Firm will be required to execute a Conflict of Interest Disclosure.
CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Balcones Heights not later than the 7th business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. For more information or to obtain Questionnaire CIQ visit the Texas Ethics Commission web page at:
<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>.

IF QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS "C" MISDEMEANOR.

- F. Independent Contractor: Firm agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is and shall be deemed to be an independent contractor(s), responsible for its respective acts or omissions, and that the City shall in no way be responsible for firm's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- G. Insurance
By signing and submitting a proposal under this solicitation, the offer or certifies that if awarded the contract, it will have the following insurance coverages at the time the work commences:
1. Worker's Compensation – Statutory requirements and benefits.
 2. Bodily Injury and Property Damage - \$1,000,000.
 3. Broad form Comprehensive General Liability - \$1,000,000 Combined Single Limit coverage,
 4. Automobile Liability - \$1,000,000 Combined Single Limit.
 5. Coverage for Premises, Operations, Products and Competed Operations - \$2,000,000.
 6. General Aggregate shall be no less than \$2,000,000.

7. Professional Liability Insurance (Errors and Omissions) - \$1,000,000.

The City of Balcones Heights is to be named as additional insured on the Comprehensive General Liability and Automobile Liability policies and this is to be so noted applicable Certificates of Insurance. The Certificates shall be delivered to the City of Balcones Heights prior to the commencement of work.

EXHIBIT A

CITY OF BALCONES HEIGHTS STANDARD PROFESSIONAL SERVICES AGREEMENT

THE STATE OF TEXAS §
§
BEXAR COUNTY §

This Professional Services Agreement ("Agreement") is made and entered by and between the City of Balcones Heights, Texas, (the "City") a Texas municipality, and _____ ("Professional").

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project". Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license.

(C) The Professional 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 Professional may rely upon the accuracy of reports and surveys provided to it by the City 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.

Section 3. Compensation.

(A) The Professional shall be paid in the manner set forth in Exhibit "B" and as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due

within thirty (30) days of the City's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A) and accounted for in the total contract amount in Exhibit "B". If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work; Additional Work.

(A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

Additional Work: The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City and services shall be completed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance as provided for herein and as required and described in the Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit C, Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employer's liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "D".

Section 7. Miscellaneous Provisions.

- (A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.
- (B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.
- (C) *Professional's Seal.* To the extent that the Professional has a professional seal it shall be placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.
- (D) *Compliance with Laws.* The Professional shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.
- (E) *Independent Contractor.* Professional acknowledges that Professional is an independent

contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) Non-Collusion. Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(G) Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Professional and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 9. Indemnification. Professional agrees to indemnify and hold the City of Balcones Heights, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Professional or the Professional's agent, consultant under contract, or another entity over which the Professional exercises control.

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Bexar County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Bexar County, Texas.

Section 15. Paragraph Headings Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

EXECUTED, by the City on this the _____ day of _____, 20____

CITY:

PROFESSIONAL:

BY: _____

BY: _____

Name:

Name

Title:

Title:

ADDRESS FOR NOTICE:

City of Balcones Heights
Attn: David Harris, City Administrator
3300 Hillcrest Drive
Balcones Heights, TX 78201

Professional Name
Attn: _____
Address: _____
Address: _____

WITH A COPY TO:

City Attorney
City of Balcones Heights, Texas
Attn: Frank Garza
601 NW Loop 410, Suite 100
San Antonio, TX 78216