



**CITY OF SHAVANO PARK**

**REQUEST FOR PROPOSALS**

**FOR**

**INFORMATION TECHNOLOGY**

**MANAGED SERVICES**

**Submittal Deadline**  
**August 3, 2018 @ 3:00P.M. CST**

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## **I. SCOPE OF SERVICES**

The City of Shavano Park ("City") seeks Proposals from qualified service providers for Information Technology (IT) Managed Services to provide the expertise and management skills necessary to assess, advise and to furnish, install, maintain, upgrade and repair (as necessary) the City's IT network.

There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

Any inquiries concerning the request for proposals should be addressed to City Secretary Zina Tedford at (210) 493-3478 or [ztedford@shavanopark.org](mailto:ztedford@shavanopark.org).

It is anticipated that the selection of a firm will be completed on August 27, 2018.

The City 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 firm of the conditions contained in the request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the firm selected.

## **II. DESCRIPTION OF THE CITY**

The City of Shavano Park is a 3.3 square mile community of approximately 3,400 residents located in north Bexar County along NW Military Highway between Loop 1604 and Huebner Road. The City has fifty-one (51) full-time equivalent employees over five (5) departments (Administration, Police, Fire, Public Works and Water). See Attachments A and B for details on the City's IT network hardware, major applications, physical and digital layout.

## **III. SCHEDULE**

Wednesday, July 11 – Bid issued

Wednesday, July 18 – Pre-submittal conference

Monday, July 23 – Inquiry deadline

Thursday, July 26 – Staff answers

Friday, August 3 – Bid submission deadline

August 8 - 14 – Potential interviews

Monday, August 20 – City Staff select firm for recommendation to City Council

Monday, August 27 – City Council meeting - Council reviews staff recommended firm; makes final decision

#### IV. SCOPE OF WORK

The City of Shavano Park is soliciting proposals from qualified professional vendors to provide IT managed services. **The City's IT network planning, day-to-day operations and security are overseen by the Assistant to the City Manager with the technical assistance and expertise of an IT Managed Services provider.** It not intended for a managed services contract to provide 100% of City IT needs; as an example the City is currently provided only 14 hours of remote support and 10 hours on onsite support under its current contract. Prospective bidders should keep this in mind when considering this Scope of Work.

The following details the services to be provided to the City of Shavano Park:

- 24X7 availability of remote support with guaranteed response time to critical events; Server down emergencies shall have a 2 hour or less response time
- On call secure remote technical assistance for City staff during day-to-day operations
- Server and Network Administration – management & configuration of servers, routers, switches, access points and other network appliances
- Firewall & VPN Administration – configuration, updates, monitoring and alerting
- Assist staff in managing endpoint security software
- Assist staff in managing email security software
- Backup & Disaster Recovery: Planning, Monitoring, Alerting and regularly tested testing of backups by restore of test files
- Patch Management – monitoring, alerting and ensuring installation
- Domain Administration
- User Account Administration
- Regular inspection of Network and Servers Logs
- Drive space monitoring
- Provide support for installation of IT hardware & software
- Provide support for migration of network operating systems and files
- Provide monthly reports of network health and vitality
- Regular reports on current status of service calls and projects
- Lifecycle Management of Hardware: Advice for end-of-life notification, replacement, and asset decommissioning/disposal
- Consultation services for software and hardware solutions
- Provide as needed, research of technology needs for future growth essential to the City of Shavano Park

## V. SUBMITTAL REQUIREMENTS

Respondent's submittal shall include the following items in the following sequence:

- A. Submittal Cover – The Submittal Cover is signed by a person, or persons, authorized to bind the entity, or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint Ventures require signatures from all firms participating in the Joint Venture. Joint Ventures are required to provide legal proof of the joint venture such as a Joint Venture Agreement as an attachment to their submittal.
- B. Consultant's Qualification Statement
- C. Statement on relevant experience to hardware and applications in Attachment A
- D. Organizational Chart and Staff Resumes
- E. References
- F. Proposed Fees (See Section VII(B) for instructions)
- G. Proof of Insurance
- H. Completed W-9 Form
- I. Completed Conflict of Interest Questionnaire Form (See Section X, subsection A)

Respondent is expected to examine this solicitation carefully, understand the terms and conditions for providing the services listed herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE-REFERENCED DOCUMENTS MAY RESULT IN THE RESPONDENT'S SUBMITTAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

## VI. PRE-SUBMITTAL CONFERENCE

A non-mandatory pre-submittal conference will be held on **Wednesday, July 18, 2018 at 10:00 a.m.** at the City of Shavano Park Council Chamber located at 900 Saddletree Court, Shavano Park, Texas 78231.

## VII. BIDDING INSTRUCTIONS

Respondent shall provide five (5) copies of their submittal; one (1) clearly marked "Original" and signed and four (4) duplicates. All copies must be submitted in a sealed package, clearly marked on the front of the package "**INFORMATION TECHNOLOGY MANAGED SERVICES.**" All submittals must be received by the City Secretary no later than **3:00 p.m. CST, Friday, August 3, 2018** at the address below:

City of Shavano Park  
Attn: City Secretary

900 Saddletree Court  
Shavano Park, Texas 78231

Any submittal received after this time shall not be considered. Submittals sent by facsimile or email will not be accepted.

- A. **Submittal Format:** Each submittal shall be typewritten and submitted on 8 ½" x 11" white paper. Electronic files shall not be included as part of the submittal; compact disks and/or flash drives submitted as part of the submittal shall not be considered.
- B. **Proposed Fees:** The City is requesting that the vendors submit an All-Inclusive fixed fee service contract for all-inclusive services and maintenance. Other major projects would be negotiated on an as needed basis.

Vendors may also submit an alternative proposed fee structure that they feel would meet the needs of the City as an included alternate bid.

Vendors must list, specifically, any services which would not be covered in the proposal price. The vendor shall indicate the impact, if any, of changes in the City's IT infrastructure (number of servers and PC's) on the fixed fee. Identify the following for those services not under the fixed fee:

1. A fee schedule containing the vendor hourly rates
  2. A description of how services will be billed
  3. A description of additional charges, as in out-of-pocket expenses for travel, subsistence, etc.
- C. Respondents who submit responses to this solicitation shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or shorthand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include their 9-digit Internal Revenue Service Taxpayer number on the W-9 Form. If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity in its submittal, the City Manager shall have the discretion, at any point in the contracting process, to suspend consideration of the submittal.

- D. All provisions in Respondent's submittal, shall remain valid for ninety (90) days following the deadline date for submissions or, if a submittal is accepted, throughout the entire term of the contract.
- E. All submittals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the submittal, the Pre-Submittal Conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

#### **VIII. COMMUNICATION GUIDELINES**

Once the solicitation has been released, Respondents are prohibited from communicating with City staff and elected officials regarding the solicitation, with the following exceptions:

- A. Respondents are prohibited from communicating with elected City officials regarding the solicitation or Submittals from the time the solicitation has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees from the time the solicitation has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the solicitation and/or Respondents' Submittals. Violation of this provision by Respondent and/or their agent may lead to disqualification of Respondent's submittal from consideration. Exceptions to the restrictions on communication with City employees include:
  - 1. Questions and responses during the pre-submittal conference.
  - 2. Respondents may submit questions electronically to [ztedford@shavanopark.org](mailto:ztedford@shavanopark.org) concerning this RFQ before **4:00 p.m. CST, on Monday, July 23, 2018**. Questions received after the stated deadline may not be answered. Received questions and responses will be posted to the City's website at [http://shavanopark.org/how\\_do\\_i/find\\_a\\_rfp\\_or\\_rfq.php](http://shavanopark.org/how_do_i/find_a_rfp_or_rfq.php) by **4:00 p.m. CST, on Thursday, July 26, 2018**.
  - 3. Respondents may provide responses to questions asked of them by the City staff or officials after responses are received and opened and during any subsequent interviews.

- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City.

**IX. AMENDMENTS TO SOLICITATION**

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the solicitation, and changes to the solicitation – if any – shall be made in writing only.

**X. EVALUATION CRITERIA**

The City Manager with the assistance of City staff will evaluate qualifications based on requirements described in this section. The highest qualified respondents may be selected to attend a formal interview. The interview will allow the invited respondents to further discuss their qualifications with City Staff and to respond to questions from the staff. The City Manager shall make a selection recommendation to City Council in a public meeting. If accepted by City Council the City Manager will begin to negotiate a contract. The City of Shavano Park 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.

Evaluation Criteria:

- Qualifications and Experience [20%]
- Relevant Experience with City Hardware & Software (Attachment A) [15%]
- Work Plan addresses Scope of Work [15%]
- Quality of References [10%]
- Pricing [40%]

**XI. AWARD OF CONTRACT & RESERVATION OF RIGHTS**

The City reserves the right to select one or no firm in response to this proposal. The firm, if selected, will be the firm whose proposal is deemed most advantageous to the City, as determined by City Council. This proposal does not commit the City to enter into a Contract, award any services related to this proposal.

The City will require the selected firm to execute a contract 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.

The City reserves the right to contract any additional audits or reviews with whomever they choose.

**A. 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 Shavano Park 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 [www.ethics.state.tx.us/forms/CIQ.pdf](http://www.ethics.state.tx.us/forms/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.

- B. 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.

## ATTACHMENT A

### City of Shavano Park Hardware & Software Inventory

#### Major Network Hardware

- PowerEdge R620 (Server 2012): Domain / Primary Apps Server (virtualized)
- PowerEdge R530 (Server 2012): Exchange Server (virtualized)
- PowerEdge R730 (Server 2012): Police Video Server
- SonicWALL NSA 2650 Firewall
- Buffalo Terastation for Backup
- 31 Endpoints (mostly Dell Optiplex with Windows 7 OS, some Windows 10 OS)
- 2 Ubiquiti POE + AT Injectors
- 3 SonicWALL Sonic Points

#### Major Applications

Application	Description / Purpose
Cylance (cloud)	Endpoint & Network Security
SonicWALL Total Secure Email (cloud)	Email Security
Intronis (Barracuda)	Backup software
Tyler Technologies INCODE	All Financials & Water billing
Tyler Technologies RMS	Police Reporting
Tyler Technologies Brazos	Police Citations
Stalker Radar's Coptrax	Police Videos (dashcam / body cam)
Netmotion	Bexar County Dispatch VPN
VTSCADA	Water Utilities Communications
Orion (Badger Meter)	Water Meter Reading

## ATTACHMENT B

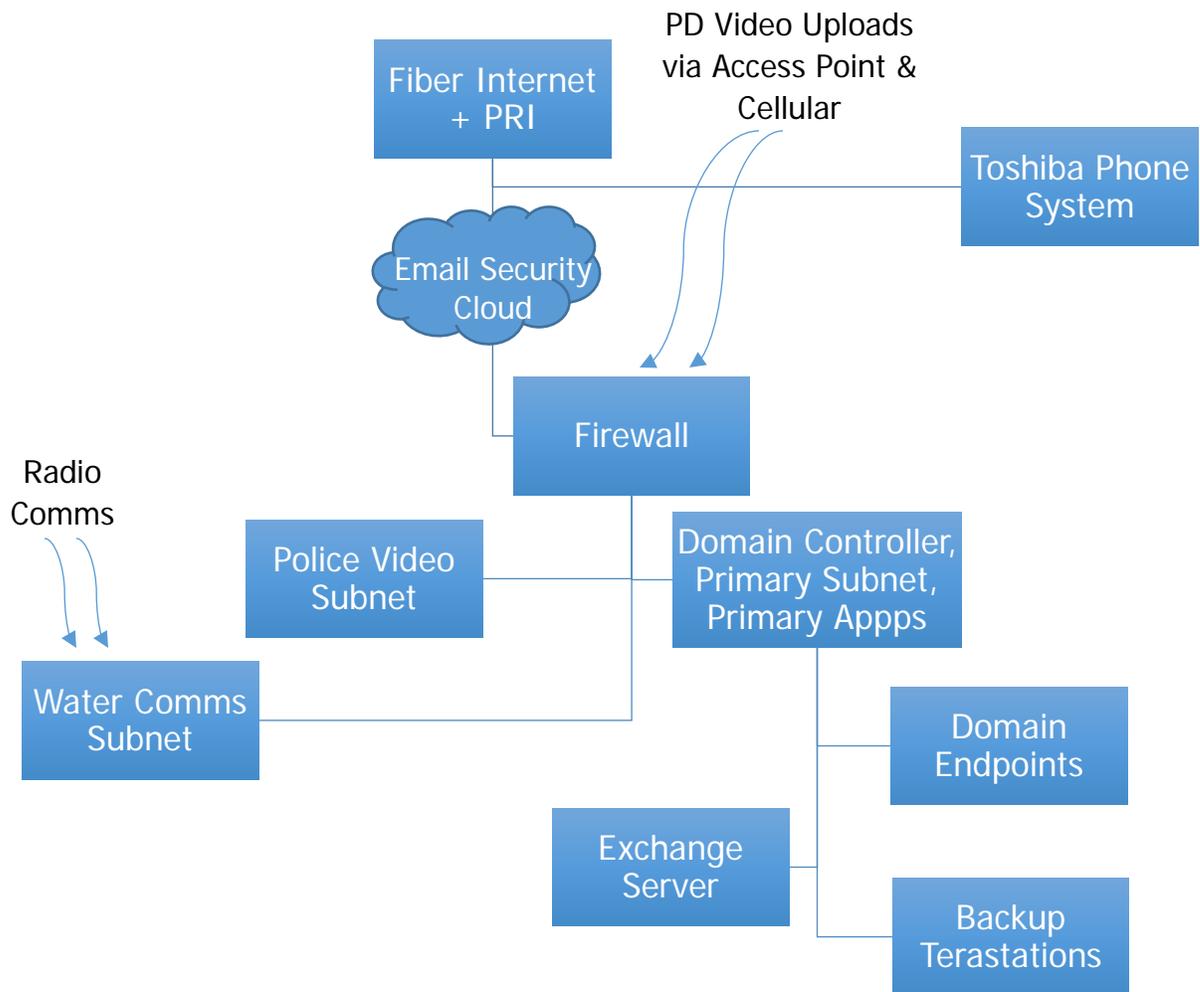
### City of Shavano Park Network Map

#### Physical Layout

Description: The City's network WAN access for both internet and phone is at City Hall (+Police Station) via a single fiber connection. A conduit with two 1Gbe fiber and two copper lines connects City Hall network and Toshiba phone system to the Fire & Public Works / Water Buildings. A copper cat 5e/6 UTP cable connects Public Works Buildings to the Fire Barracks. The City will be required to relocate the conduit under NW Military for the Texas Department of Transportation NW Military improvement project in 2020.



## Digital Layout



Description: The City's network is guarded by a firewall and cloud email security with Cylance installed on servers and endpoints. Wi-fi signals are administered through the firewall. Subnets for police videos and water communications exist outside the domain. In addition to the in-network backups shown above, backups of critical files are Intronis cloud weekly images of the virtualized servers are handled manually.

**CITY OF SHAVANO PARK**  
**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 Shavano Park, 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 of the level of professional quality performed by Professionals regularly rendering this type of service.

(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.

(B) *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. 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 employers 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 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 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 Shavano Park, 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) created by, arising from or in any manner relating to the services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE.**

**For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.**

**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.

**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.

**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 and Chapter 2252 of the Texas Government Code.

**25. Boycott Israel.** The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code Chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of this agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

**EXECUTED**, by the City on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY:**

**PROFESSIONAL:**

By: \_\_\_\_\_  
Name: Bill Hill  
Title: City Manager

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

**ADDRESS FOR NOTICE:**

**CITY**

**PROFESSIONAL**

City of Shavano Park  
Attn: Bill Hill, City Manager

900 Saddletree Court  
Shavano Park, Texas 78231

with a copy to:

City Attorney  
City of Shavano Park, Texas  
Attn: Charles E. Zech  
2517 N. Main Avenue  
San Antonio, Texas 78212

Exhibit "A"

Scope of Services

Exhibit "B"  
Compensation

## Exhibit "C"

### REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Professional shall comply with each and every condition contained herein. The Professional shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Professional shall maintain insurance coverage equal to that required of the Professional. It is the responsibility of the Professional to assure compliance with this provision. The City of Shavano Park accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

#### INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Professional shall specifically endorse applicable insurance policies as follows:

1. The City of Shavano Park shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Shavano Park shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Shavano Park will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Shavano Park as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Shavano Park of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Professional may maintain reasonable and customary deductibles, subject to approval by The City of Shavano Park.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Professionals obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Professional shall furnish The City of Shavano Park with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Shavano Park within ten (10) business days after contract award and prior to starting any work by the successful Professional's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Shavano Park, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Shavano Park. The certificate of insurance and endorsements shall be sent to:

**City of Shavano Park  
Purchasing Department  
900 Saddletree Court  
Shavano Park, TX 78231**

**emailed to:**   
**Faxed to:**

Exhibit "D"

Evidence of Insurance