



**REQUEST FOR QUALIFICATIONS  
FOR ARCHITECT/ENGINEER DESIGN/BUILD  
OVERSIGHT**

The City of Copperas Cove is  
Hereby Soliciting Sealed RFQ's  
for:

Architect/Engineer services to act as the City's  
Independent Representative for a Design/Build project  
IAW TLGC Section 2269.305

**RFQ 2020-14-54**

**Request for Qualifications will be received until 2:00 p.m. on  
August 20, 2020**

Return Bid To: City of Copperas Cove  
Stephanie Potvin – Staff Accountant III  
914 S. Main Street Suite H, or  
P.O. Drawer 1449  
Copperas Cove, TX 76522

## INSTRUCTIONS TO OFFERORS

1. The envelope or package containing the completed Request for Qualifications should be marked legibly on the outside with the submitter's name and address along with "Request for Qualifications for Architect/Engineer services; RFQ No. 2020-12-54".
2. The offeror shall sign and date the submittal where provided within the RFQ. The person signing the proposal must have the authority to bind the firm in a contract. Proposals which are not signed and dated in this manner may be rejected.
3. All documents shall be received at the City of Copperas Cove, Finance Department, located at, 914 S. Main Street Suite H, Copperas Cove, Texas 76522, or sent to P.O. Drawer 1449, Copperas Cove, TX 76522 by the deadline shown on the cover sheet of this Request for Qualifications.
4. **Facsimile transmittals and electronic transmittals will not be acceptable.**
5. The City of Copperas Cove, Texas, reserves the right to reject any or all Request for Qualifications as it shall deem to be in the best interests of the City of Copperas Cove.
6. Any interpretations, corrections or changes to this Request for Qualifications and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Copperas Cove Finance Department. Addenda will be loaded on [www.copperascovetx.gov](http://www.copperascovetx.gov). Vendors will be responsible for reviewing the City's website at [www.copperascovetx.gov](http://www.copperascovetx.gov) to see if any addenda have been issued. Offerors shall acknowledge receipt of all addenda on the sealed envelope or package containing their proposal.
7. Proposals resulting from submitted Request for Qualifications must comply with all applicable federal, state, county and local laws concerning these types of services.
8. A prospective Offeror must affirmatively demonstrate Offeror's responsibility. A prospective Offeror must meet the following requirements:
  - a. have adequate financial resources, or the ability to obtain such resources as required;
  - b. be able to comply with the required or proposed delivery schedule;
  - c. have a satisfactory record of performance;
  - d. have a satisfactory record of integrity and ethics;
  - e. be otherwise qualified and eligible to receive an award;
  - f. workload capacity; and
  - g. proposers' availability of qualified staff.

The City of Copperas Cove may request representation and other information

sufficient to determine Offeror's ability to meet these minimum standards.

9. Section 176.006 of the Texas Local Government Code requires a bidder/vendor to file a conflict of interest questionnaire if the vendor has a business relationship with the City and has:

- (a) an employment or other business relationship with an officer or an officer's family member that results in that person receiving taxable income that is more than \$2,500 in the preceding twelve months; or
- (b) has given an officer or an officer's family member one or more gifts totaling more than \$250 in the preceding twelve months.

A vendor/bidder is required to file a questionnaire not later than the seventh business day after the later of the following:

- (a) the date the vendor begins discussions or negotiations to enter into a contract with the City or submits an application or response to a bid proposal; or
- (b) the date the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member.

State law requires that a vendor file an updated questionnaire with the City Secretary's office annually, before September 1<sup>st</sup>, and/or not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate. The Conflict of Interest Questionnaire is attached in compliance with this law is the responsibility of each bidder/vendor.

***The City of Copperas Cove is aware of the time and effort you expend in preparing and submitting proposals to the City. Please let us know of any proposal requirements causing you difficulty in responding to our Request for Qualifications. We want to facilitate your participation so that all responsible vendors can compete for the City's business.***

***Questions concerning this Request for Qualifications and specifications should be submitted in writing to: Stephanie Potvin – Staff Accountant III at [spotvin@copperascovetx.gov](mailto:spotvin@copperascovetx.gov)***

## Request of Qualifications

I.

### Introduction

The City is interested in obtaining the services of an Architect/Engineer to act as the City's representative (TLGC Sec. 2269.305) during a design/build of five (5) restrooms with one of the five having storage and concessions. All five structures will be within Copperas Cove City Park. The City intends to competitively bid the project to qualified Architects/Engineers who will perform the work according to the Texas Local Government Code and chosen pursuant to this RFQ.

### **II. Information Requested From Offerors**

Each Request for Qualifications shall contain all the items listed below. Incomplete statements may be rejected in technical review by the Evaluation Committee.

A. Complete the firm information sheet on Page 6 of this RFQ.

B. Provide a summary of the firm's history including information on parent company, if applicable.

C. Provide a listing of present office locations and state the location of the office(s) which will provide services to the City.

D. Provide a list of employees that may perform work for the City and give a summary of their qualifications and experience.

E. Provide a listing of projects that are representative of your firm's capabilities. Briefly describe the services provided by your firm and state whether your firm was the prime professional or played another role in the project.

F. Provide a list of at least five (5) references familiar with the firm's capability to deliver services, including contact names, phone numbers and description of services provided.

G. If the firm is pre-qualified, the attached contract for professional services written by the City's Legal Department shall be the basis for any contract negotiation that may take place following selection for the project. The method of payment shall be a lump sum fee agreement with payments distributed throughout the life of the project(s) based upon percentages of work completed or specific tasks completed. Any additional contract services shall be lump sum. By submitting your qualifications your firm is willing and has the ability to comply with these terms and conditions, including the execution of the attached contract agreement for professional services.

H. Provide a completed Insurance Requirement Affidavit asserting that you can comply with the insurance requirements specified in the attached Agreement for Professional Services. (See attached form)

I. Provide a completed Vendor Information Sheet and W9 for accounts payable purposes. (Attached)

### III. Submission Information

The City of Copperas Cove will receive Qualifications prior to August 20, 2020 @ 2:00PM. Deadline for questions or request for clarification must be submitted to Stephanie Potvin, Staff Accountant III, in writing prior to July 29, 2020 @ 2:00pm via email at [spotvin@copperascovetx.gov](mailto:spotvin@copperascovetx.gov). All responses to the questions will be sent to all bidders in addendum form.

**One (1) original copy and (3) copies along with one (1) electronic version of the submission in a PDF format on DVD/CD** of the Request for Qualifications shall be submitted in an envelope or box bearing the name and address of respondent and also be identified in the lower left corner with "Request for Qualifications for Park Architectural Services, RFQ No. 2016-13-54" and be addressed as follows:

**City of Copperas Cove  
Stephanie Potvin  
Staff Accountant III  
PO Box 1449  
914 S. Main Street, Suite H  
Copperas Cove, Texas 76522**

### IV. Proposal Evaluation

#### A. Minimum Qualifications

The City will review proposals received to determine whether or not each proposer meets the following minimum qualifications:

- Architect/Engineer licensed in the State of Texas
- Experience with projects that required development of similar park development is required.
- Has the financial resources and bonding capability (if needed) for the performance of the desired engineer services, or the ability to obtain such resources.
- Ability to meet minimum insurance requirements identified by the City of Copperas Cove identified within the standard City contract.

**B. Evaluation Criteria**

Proposals meeting the above minimum qualifications will be evaluated by the City using the following criteria:

|    | <b>CRITERIA</b>  | <b>MAXIMUM POINTS</b> | <b>SCORE</b> |
|----|--|-----------------------|--------------|
| 1. | <b>Experience</b> – Demonstrated experience providing requested services for similar projects of scope and scale by providing five recent examples of projects managed.                                | <b>25</b>             |              |
| 2. | <b>Capacity</b> – Staff capability and availability of Professional staff to serve the City of Copperas Cove in a competent and timely manner.   | <b>25</b>             |              |
| 3. | <b>Methodology</b> – The approach the Engineer/Architect will use to manage the scope of work of the selected design/build firm.   | <b>20</b>             |              |
| 4. | <b>References</b> – Will be based on the evaluation of the references submitted as part of this RFQ. City may also contact other references as deemed appropriate for evaluation of previous projects. | <b>20</b>             |              |
| 5. | <b>Task Understanding/familiarity</b> – Knowledge of and experience in the area and working with Copperas Cove or similar cities and ability to comply with City’s codes, policies, and regulations.   | <b>10</b>             |              |

The City of Copperas Cove is an Affirmative Action and Equal Opportunity Employer.

### FIRM INFORMATION SHEET

|                           |  |
|---------------------------|--|
| Company Name              |  |
| Address                   |  |
| City, State, Zip          |  |
| Fax Number                |  |
| E-mail Address            |  |
| Tax Identification Number |  |

Please provide prior government experience:

|   |  |
|---|--|
| <b>Name of Entity</b>                   |  |
| <b>Dates of Services Provided</b>       |  |
| <b>Contact Person</b>                   |  |
| <b>Project Assigned &amp; Completed</b> |  |
|   |  |
|   |  |

|                                  |  |
|----------------------------------|--|
| Signature of Authorized Agent    |  |
| Printed Name of Authorized Agent |  |
| Title                            |  |
| Date                             |  |



# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

## FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

CITY OF COPPERAS COVE, TEXAS  
INSURANCE REQUIREMENT AFFIDAVIT

To Be Completed By Appropriate Insurance Agent

I, the undersigned Agent/Broker, certify that the insurance requirements contained in this bid document have been reviewed by me with the below identified Contractor. If the below identified Contractor is awarded this contract by the City of Copperas Cove, I will be able to, within thirty (30) days after being notified of such award, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

\_\_\_\_\_  
Agent (Signature)

\_\_\_\_\_  
Agent (Print)

Name of Agency/Broker: \_\_\_\_\_ Address

of Agent/Broker: \_\_\_\_\_ City/State/Zip:

Agent/Broker

Telephone Number: \_\_\_\_\_

CONTRACTOR'S NAME: \_\_\_\_\_  
(Print or Type)

**NOTE TO AGENT/BROKER**

If this requirement is not met, the City has the right to reject this bid and award the contract to another firm meeting the specifications. If you have any questions concerning these bond requirements, or the bid, please contact Stephanie Potvin at [spotvin@copperascovetx.gov](mailto:spotvin@copperascovetx.gov)

**CITY OF COPPERAS COVE**  
**STANDARD PROFESSIONAL SERVICES AGREEMENT**

THE STATE OF TEXAS     §

CORYELL COUNTY         §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of Copperas Cove, Texas, (the “City”) a Texas municipality, and \_\_\_\_\_ (“Professional”).

**Section 1. Duration.** This Agreement shall become effective upon \_\_\_\_\_ 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 “A” 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 and accounted for in the total contract amount. 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 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, except that if the Professional has adopted new rates subsequent to those contained in the Scope of Work and those rates were adopted at least 6 months prior to the request by the City for the Additional Work than those rates shall apply. 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 relates 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 furnish to the City evidence of the following insurance during the term of this Agreement and thereafter as required herein:

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 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.

#### **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 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 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 Copperas Cove, 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.**

**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 Coryell County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Coryell 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 Examine Records.** City shall have the right to examine the books and records of Professional as they relate to this agreement 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** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY:**

**PROFESSIONAL:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Ryan Haverlah

Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY**

914 S. Main Street Suite D  
Copperas Cove, TX 76522

**PROFESSIONAL**

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With a copy to:

City Secretary  
City of Copperas Cove, Texas  
914 S. Main Street Suite C  
Copperas Cove, TX 76522

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

This project will include acting as the City's representative for the duration of the construction of five (5) restrooms with one of the five having storage and concessions in the Copperas Cove City Park.

The City adopted a parks master plan in April of 2011 and the construction of the restrooms are associated within this master plan. The parks master plan was recently re-adopted/approved through our parks advisory board along with approving the CIP planning documents identifying which years and what projects will be executed during these years.



“The City Built for Family Living”

Finance Department

**VENDOR INFORMATION SHEET**

**COMPANY NAME** \_\_\_\_\_ **TAX ID #** \_\_\_\_\_

**PRIMARY POC** \_\_\_\_\_ **DATE** \_\_\_\_\_  
(PLEASE PRINT)

**SIGNATURE** \_\_\_\_\_ **PHONE NUMBER** \_\_\_\_\_

**EMAIL ADDRESS** \_\_\_\_\_

**SECONDARY POC** \_\_\_\_\_ **DATE** \_\_\_\_\_  
(PLEASE PRINT)

**SIGNATURE** \_\_\_\_\_ **PHONE NUMBER** \_\_\_\_\_

**EMAIL ADDRESS** \_\_\_\_\_