

RESOLUTION NO. 19-R-63

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS
AUTHORIZING A CONTRACT WITH THE OVID BELL PRESS FOR THE
SCHERTZ MAGAZINE PRINTING CONTRACT AND OTHER MATTERS IN
CONNECTION THEREWITH**

WHEREAS, the Public Affairs Department is charged with the responsibility of maintaining City publications such as *Schertz Magazine*; and

WHEREAS, in order to fulfill its responsibility as set forth above, the City has identified a need for printing services; and

WHEREAS, bids were received through the sealed bidding process and The Ovid Bell Press was the highest rated firm based on the evaluation criteria and is the best overall value for the City, with an annual not to exceed amount of \$93,771.48;

WHEREAS, The City staff of the City of Schertz (the "City") has recommended that the City accept the bid proposal from The Ovid Bell Press for printing services; and

WHEREAS, the City Council has determined that it is in the best interest of the City to contract with The Ovid Bell Press pursuant to the recommendation made by Public Affairs Staff.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the contract with The Ovid Bell Press for printing services in substantially the form set forth on Attachment A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

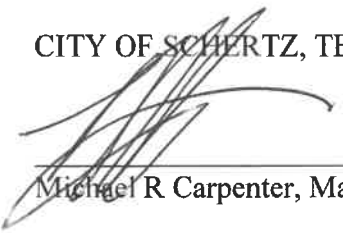
Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 28th day of May, 2019

CITY OF SCHERTZ, TEXAS



Michael R Carpenter, Mayor

ATTEST:



Brenda Dennis, City Secretary



ATTACHMENT A
SERVICE AGREEMENT

Section 4. Time of Completion

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor 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 Contractor prior to the time of termination.

Section 5. Insurance

In the event the Contractor, its employees, agents or subcontractors enter premises occupied by or under the control of the City in the performance of this Agreement, the Contractor agrees that it will maintain general and automobile liability in reasonable limits covering the obligations set forth in this Agreement, and will maintain workers compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing this Agreement on premises occupied by or under the control of the City. Upon request by City, Contractor shall furnish Certificate of Insurance for, but not limited to, Commercial General Liability, Commercial Auto Liability, and Workers Compensation.

Section 6. Miscellaneous Provisions

- (A) *Subletting.* The Contractor 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 Contractor of any responsibility for work done by such subcontractor.
- (B) *Compliance with Laws.* The Contractor 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 Contractor shall furnish the City with satisfactory proof of compliance.
- (C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor 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 Contractor.
- (D) *Non-Collusion.* Contractor represents and warrants that Contractor 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. Contractor further agrees that Contractor 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 Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor 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 Contractor under or pursuant to this Agreement.

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

Section 7. Termination

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor 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 Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;
 - (4) By the City, at will and without cause upon not less than five (5) days written notice to the Contractor.
- (B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor 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 Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor 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 Contractor 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 Contractor, the Contractor shall be compensated for

all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF SCHERTZ, 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 WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Section 9. 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 10. 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 11. 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 12. Waiver

Either City or the Contractor 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 13. 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 Guadalupe County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Guadalupe County, Texas.

Section 14. 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 15. 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 16. 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 17. 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 18. Exhibits

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

Section 19. 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 20. 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 21. Right To Audit

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

Section 22. 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 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire

Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Certificate of Interested Parties

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Schertz City Council will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for any and all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

IF YOU HAVE ANY 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.

[The remainder of this page is intentionally left blank.]

EXECUTED on this the _____ day of _____, 2019.

CITY:

CONTRACTOR:

By: _____
Name: Dr. Mark Browne
Title: City Manager

By: _____
Name: _____
Title: _____

ADDRESS FOR NOTICE:

CITY:

CONTRACTOR:

City of Schertz
Attn: Mark Browne, City Manager
1400 Schertz Parkway
Schertz, Texas 78154

Ovid Bell Press, Inc.
PO Box 370
Fulton, MO 65251
800-835-8919

Exhibit A

SCOPE OF WORK

Project

The Contractor shall provide printing services for the City's monthly publication, *Schertz Magazine*. The City produces twelve (12) issues a year in monthly increments.

The Contractor will be responsible for the following duties and services:

1. Printing and assembling 16,000 copies of *Schertz Magazine* on a monthly basis.
2. Magazine must be printed and assembled using flat 11x17, finished 8.5x11 stock.
3. Magazine is 48 pages self-cover.
4. The Cover Stock shall be 80# Silk Cover-4/4 with Satin Varnish or specified equivalent commodity stock held by printer.
5. Text Pages Stock shall be 80# silk text-4/4 with Satin Varnish or specified equivalent commodity stock held by printer.
6. The magazine must be saddle stitched and trimmed to size.
7. The magazine must be Web Press or Sheet Fed.
8. Ability to print the publication within 5 days of upload from the City. Guaranteed ship/delivery to post office on the 5th day. Unless delivery is made to post office in Texas, additional days will be needed for transit.
9. Must be able to provide mail prep/inkjet services.

Price

Price per Magazine \$0.488 each

Price per Month \$7,814.29

Price per Year \$93,771.48

Sample Invoice

16,000 copies -
 SCHERTZ TALES
 48 pages self-cover (8-1/2 x 10-7/8)

Add'l M

Prepress:

48 Auto processing (proof online)	204.00	
24 Plates	324.00	

Printing:

2 16-page signature 4/4	938.60	23.60
1 16-page signature 4/4 + gloss or dull UV coating	863.70	18.50

Bindery:

16,000 Saddle stitch 1-4 pockets	230.45	10.15
----------------------------------	--------	-------

Addressing/Mailing:

14,576 Addressing publication, 10,000 copies and above	172.88	10.30
--	--------	-------

USPS List Processing:

14,576 Processing mail list, up to 19,999 addresses	243.64	15.00
---	--------	-------

Miscellaneous:

16 Cartons	20.00	
1 Palleting	25.00	
Walk Sequence	82.50	

Paper consumption:

8,673.15 #'s 80-pound #3 Gloss 35" Roll @		
54.30 cwt. (MCC 100175)	4,709.52	236.48

ESTIMATE

\$7,814.29	\$314.03
-------------------	-----------------

Estimated shipping for 1,424 copies from 65251 to 78154 via Estes LTL is \$179.00.

Shipping estimates have no guarantee and do not include any additional services unless otherwise noted.

Digitally printed color proofs are available for an additional \$10.20 per page or \$35.70 per 8-page flat.

O-Mag, a digital edition of your magazine, is available for \$4.25 per page.

Less than 1/4" binding lip on inserts will result in a 20% increase on the Saddle Stitch per thousand cost.

The above price reflects an embedded 3% cash discount. Customers who make credit card payments are to forfeit the embedded 3% cash discount.

NOTE: Since paper is sold at price prevailing at time of shipment, there may be adjustments from time to time based on the paper's actual invoice cost. Additional charges may apply depending on the specifications of the job. Actual production is contingent upon available press time and approved credit arrangements.