



## SOLICITATION AND OFFER

City of New Braunfels  
Purchasing  
550 Landa Street  
New Braunfels, Texas 78130

**Solicitation Number: RFQ 21-012**

**Preliminary Design of South Castell Avenue**

Invitation for Bid (IFB)

Request for Qualifications (RFQ)

Date Issued:

March 30, 2021

### SOLICITATION

Pre-Submittal Meeting will be hosted on **April 14, 2021, 10:00 A.M. (Central Time)**

Questions may be submitted until close of day **April 16, 2021, 5:00 P.M. (Central Time)**

Respondents must submit sealed SOQ containing one (1) signed original hardcopy and one (1) in electronic format (USB).

Qualifications will be received at the office of the City Secretary at the address shown above until: **3:00 P.M. (CST), April 29, 2021**

Qualifications received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:

**Barbara Coleman,**

Purchasing Manager

Email: BColeman@nbtexas.org

Phone: (830) 221-4389

Fax: (830) 608-2112

(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

5% Proposal Bond Required:  YES  NO

100% Payment Bond Required:  YES  NO

100% Performance Bond Required:  YES  NO

### OFFER

(This portion must be fully completed by Proposer.)

Respondent will comply with the General Terms and Conditions required by the City of New Braunfels.

*In compliance with the above, upon contract award the undersigned offers and agrees to furnish any or all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein.*

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.  
SIGNATURE IS MANDATORY; **MANUALLY SIGN** ORIGINAL DOCUMENT AND, IF APPLICABLE, ALL REQUESTED COPIES SUBMITTED.

1) Respondent's State of Residence: \_\_\_\_\_

Name  
and  
Address  
of Respondent:

Name and Title of Person Authorized to Sign Offer:

E-Mail Address:

Phone Number:

Fax Number:

Signature:

Title:

Date:

Name, Address and Telephone Number of  
Person authorized to conduct negotiations on  
behalf of Respondent.

(Applies to Request for Qualifications only)

## SECTION 2 – TABLE OF CONTENTS

SECTION 1 – SOLICITATION AND OFFER FORM	1
SECTION 2 – TABLE OF CONTENTS	2
SECTION 3 – PROJECT DESCRIPTION AND SCOPE	3
SECTION 4 – REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS	6
SECTION 5 – SELECTION INFORMATION	10
SECTION 6 – CONTRACT TERMS AND CONDITIONS	14
ATTACHMENT A – VENDOR CERTIFICATIONS	22
ATTACHMENT B – DRAFT PROFESSIONAL SERVICES AGREEMENT	25
ATTACHMENT C – SAMPLET PER SCOPE OF WORK	32

## SECTION 3 – PROJECT DESCRIPTION AND SCOPE

### 3.1. BACKGROUND:

The City of New Braunfels is seeking statements of qualifications from landscape architects/planning/engineering firms to prepare a preliminary design and streetscape plan for Castell Avenue in downtown New Braunfels. The City intends to plan, design and construct improvements that enhance the pedestrian environment and support the goals of promoting the continued redevelopment and infill of the downtown New Braunfels area. This effort will build on the visioning and input efforts garnered during the Downtown Implementation and South Castell Master Plan processes, as well as those relevant goals from Envision New Braunfels (the City's comprehensive plan). The specific goals of the project include:

- Linking catalytic convention site along Castell to Downtown.
- Connect private spaces to the public realm.
- Improve drainage along Castell.
- Improve walkability.
- Create a downtown gateway.
- Create a public plaza in and around the convention center.
- Incorporate enhanced pedestrian-oriented amenities that further promote walkability in the downtown area.
- Planning and anticipating future mixed use developments along the corridor.

In addition to the streetscape, a shared street is envisioned around the convention center site. A shared street is designed to emphasize pedestrian mobility by slowing traffic speeds using pedestrian volume, street design, landscaping, lighting, and material selections to help influence driver behavior and contribute to the quality of place. The shared street could also be closed to vehicular traffic for special events and festivals.

The City envisions that the preliminary design and streetscape plan will involve a review of at least the following documents:

- 2010 Drainage Study
- 2010 Downtown Implementation Plan and 2021 Ash & Lime Downtown Projects report
- 2016 South Castell Area Master Plan
- 2017 Economic Development Strategic Plan
- Envision New Braunfels- City's Comprehensive Plan

Additional information is available at the following links:

South Castell Plan: [https://www.nbtexas.org/DocumentCenter/View/21223/17\\_09-11-South-Castell-MP-Final-Report?bidId=](https://www.nbtexas.org/DocumentCenter/View/21223/17_09-11-South-Castell-MP-Final-Report?bidId=)

Ash and Lime Report: [https://newbraunfelstx-my.sharepoint.com/:b/r/personal/jewell\\_nbtx.org/Documents/SOUTH%20CASTELL%20PE%20New%20Braunfels%20Downtown%20Action%20Plan%20Final%20-%201-7-2021.pdf?csf=1&web=1&e=CFs5vb](https://newbraunfelstx-my.sharepoint.com/:b/r/personal/jewell_nbtx.org/Documents/SOUTH%20CASTELL%20PE%20New%20Braunfels%20Downtown%20Action%20Plan%20Final%20-%201-7-2021.pdf?csf=1&web=1&e=CFs5vb)

2010 Downtown Implementation Plan:

<https://newbraunfelstx.sharepoint.com/:b/s/ECD/ERF94R1WDL1HttDqT5vrldwBMdWBJCFSCsn174HovGuaLQ?e=cYzhTa>

2017 Economic Development Strategic Plan:

<https://www.nbtx.org/DocumentCenter/View/11153/NBEDSP-Final?bId=>

Comp Plan: <https://www.nbtx.org/DocumentCenter/View/16593/Envision-New-Braunfels-Final>

### **3.2. DESCRIPTION OF PROJECT:**

The Project includes, but is not limited to, the following components:

1. Seeking and conducting regular community engagement which includes gathering and incorporating input from residents, property owners, stakeholders, and community groups
2. Preparation of a base map that includes street dimensions, widths, lane configurations, building footprints and land survey
3. Investigation into all existing and future planning documentation to improve urban design, connectivity, accessibility, and enhance multi-modal forms of transportation
4. Create implementation and partial design documentation to improve streetscape portions in the redevelopment area. Improvements should incorporate parking solutions, road striping, landscaping, benches, bike racks, lighting, trash receptacles and other components that enhances streetscape functionality and beautification
5. Designing traffic calming measures as well as parking solutions that could include lane reconfiguration and on street parking
6. Identify specific projects that improve the aesthetics of the downtown Page area to promote economic development and foster community pride
7. Consideration of gateway signage, public art, design, and branding strategies that may be able to enhance the identity of the City and specific area
8. Improving the downtown corridor to enhances and support city events such as farmers markets, vending kiosks, shows and other large gatherings
9. A Downtown Streetscape Masterplan which should prioritize projects based on cost effectiveness, timeliness, scale of transit improvement, public safety, and benefit to the community. Additionally, the plan should identify cost estimates, phasing, timelines, as well as a process to evaluate successful implementation of the Streetscape Plan
10. Conceptual layout options
11. Schematic/Preliminary Engineering Report
12. Development of cost estimates

A sample scope of work is provided as **Attachment C**. Final details will be determined with the selected firm.

### **3.3 OUTCOME DESIRED:**

Keep the existing character and historic fabric while encouraging compatible infill. Prepare new regulations that ensure high-quality spaces defined by a variety of building types and uses.

- A form-based code that ensures appropriate residential transitions, promotes shared parking and reflects the walkable scale of the neighborhood commercial corridor.
- Placemaking approach to new development.
- Coded for built form that supports pedestrians, cyclists and transit.

## SECTION 4 – REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

### 4.1. PROPOSED SOLICITATION SCHEDULE:

DATE	STEP 1 - MILESTONES
March 30, 2021	RFQ issued on <a href="http://www.bidnetdirect.com/texas">http://www.bidnetdirect.com/texas</a> and <a href="http://www.nbtexas.org/">www.nbtexas.org/</a>
April 14, 2021	Pre-Submittal Meeting
April 16, 2021	Deadline for questions and request for clarification
April 29, 2021	Statement of Qualifications (“SOQ”) submission deadline
April – May 2021	City evaluation of SOQs submitted by firms

DATE	STEP 2 - MILESTONES
May 2021	Scoping meeting and negotiations with City and top-ranked firm
May/June 2021	Anticipated timeframe for City Council to consider award of contract

### 4.2. PRE-SUBMITTAL MEETING:

A pre-proposal conference will be held REMOTELY at **2:00 p.m. (CST) on April 14, 2021.**

Remote access instructions are:

Register in advance for this webinar:

[https://us02web.zoom.us/webinar/register/WN\\_XUGeiwwRSICvOefVuJzhcQ](https://us02web.zoom.us/webinar/register/WN_XUGeiwwRSICvOefVuJzhcQ)

After registering, you will receive a confirmation email containing information about joining the webinar.

Representatives of the City will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. The City will transmit to all prospective Proposers of record such Addenda as the City considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective. Pre-Proposal conference minutes and any addenda may be downloaded at <http://www.bidnetdirect.com/texas> or at the City of New Braunfels Website <http://www.nbtexas.org>.

### 4.3. CONTACT FOR QUESTIONS:

Questions relating to definitions, interpretations, and/or requests for clarification must be in writing, on or before **April 16, 2021 at 5:00 P.M. (Central Time)**, directed to:

**Purchasing Representative:** Barbara Coleman, Purchasing Manager, via email [bcoleman@nbtexas.org](mailto:bcoleman@nbtexas.org)

**All questions and/or clarification submittals shall identify the SOQ in the subject line of the email message as follows:**

Questions – RFQ 21-012 “South Castell Ave.”

No questions will be accepted after the afore-mentioned deadline.

### 4.4. RESPONSES TO INQUIRIES:

Responses to inquiries that directly affect an interpretation or change to this RFQ will be issued in writing by Purchasing as an addendum and posted at <http://www.bidnetdirect.com/texas> and the City's website [www.nbtexas.org](http://www.nbtexas.org). All such addenda issued by the Purchasing Representative before the time that SOQs are received shall be considered part of the RFQ.

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

Respondents shall be responsible for monitoring the City's website at <http://www.nbtexas.org/> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancelations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

#### **4.5. SUBMISSION INSTRUCTIONS:**

- 4.5.1** A firm wishing to be considered for a contract is requested to submit on the firm's letterhead, a statement which provides information on the following points, numbered and headed as indicated. The statements that follow request information that the Evaluation Committee will use to evaluate the SOQ. Should you opt not to follow the suggested outline, it may result in the SOQ being considered non-responsive and therefore not considered in the selection process.
- 4.5.2** To achieve a uniform review process and to obtain the greatest degree of comparability, the City of New Braunfels requires that SOQ be submitted with one original, signed hardcopy, and one electronic copy provided on USB.
- 4.5.3** An authorized official of the firm must print or type their name and **SIGN THE SOQ**.
- 4.5.4** Responses must be bound and submitted in a sealed envelope or package.
- 4.5.5** THE FOLLOWING ITEMS MUST BE INCLUDED IN YOUR STATEMENT OF QUALIFICATIONS IN THE FOLLOWING ORDER.
  1. Cover/Title Page: showing the Request for Qualifications subject; the firm's name; the name, address, email and telephone number of the contact person; and the date of the response.
  2. **TAB 1: Solicitation and Offer Form and addenda**:
    - Failure to include a signed copy of the Solicitation Offer and all addenda issued will result in the removal of the SOQ from consideration, if any.
  3. **TAB 2: Statement of Interest; please *limit response to 1 page and minimum 10-pt font***:
    - Concisely state your understanding of the services required and availability of the firm, its principals (s) and assigned professionals to undertake the project, reporting responsibilities and how the firm will interface with the City of New Braunfels project manager.
  4. **TAB 3: Information and Qualifications of Firm and Sub-Consultants**
  5. **TAB 4: Project Experience of the Firm and Sub-Consultants**
    - Tab 4 A – Team's Project Experience: Prime Firm and Sub-Consultants
    - Tab 4 B – Team's Experience with New Braunfels Issues: Prime Firm and Sub-Consultant

- Tab 4 C - City of New Braunfels Experience with Team: Prime Firm and Sub-Consultants

6. **TAB 5: Project Approach**

7. **TAB 6: Other Support and Attachments**

- Prime Consultant: Vendor Certifications – Attachment A  
**(Failure to submit Attachment A will deem your proposal non-responsive)**
- Prime and Sub-Consultants: Conflict of Interest Form (per Section 6.15)
- Prime Consultant: Certificate of Interested Parties – Form 1295 (per Section 6.16)
- Prime Consultant: Proof of Insurance: One copy completed and singed. A “for information purposes only” copy is acceptable. The awarded Contractor will be required to provide their certificate of insurance prior to contract award.

**4.5.6** Respondent should be aware that the contents of the successful SOQ response will become part of subsequent contractual documents.

**4.5.7 Opened SOQ.** A submittal may not be opened before the closing date for the purpose of changing or amending the submittal or to correct an error in the submittal terms or conditions. If the submittal is opened before the closing date by anyone other than the City, the submittal may be rejected in its entirety by the City.

**4.5.8 Additional Information.** At your option, provide in your Qualifications any contractual language, terms, conditions, considerations, or contingencies your company would request or require to be included in the negotiated contract between the City and the selected submitter, should your company be awarded the final design contract. Approval of such language, terms, conditions, considerations, or contingencies offered by a submitter remains with the City and in all cases the City's decision is final.

**4.6. DELIVERY INSTURCTIONS:**

Responses must be submitted no later than **3:00 P.M. (Central Time), April 29, 2021.**

Qualifications may be mailed or delivered (in person or by Express Mail or delivery service) to:

City of New Braunfels - City Secretary's Office  
ATTN: Purchasing  
550 Landa Street  
New Braunfels, TX 78130

The outside of the envelope or package must state:

**RFQ 21-012**  
**Project Name: “South Castell Ave.”**  
**Due: April 29, 2021, at 3:00 P.M.**

It is the sole responsibility of the Respondent to ensure prompt delivery of SOQ. The City of New Braunfels will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Respondent.

Qualifications may not be withdrawn after the time set for the closing, unless approved by the City Council.

Your offer or a modification to your offer is LATE if received after the time set for solicitation opening and shall be returned unopened and shall not be considered.

**4.7. WHAT IS NOT ACCEPTED:**

A Statement of Qualifications submitted by facsimile transmission (FAX) or by electronic mail (EMAIL) will **NOT** be accepted. A Statement of Qualifications received **AFTER** the deadline (as stated above) for submitting the Statement of Qualifications will **NOT** be considered under any circumstances and will be returned unopened to the submitter.

## SECTION 5 – SELECTION INFORMATION

### 5.1 SELECTION AND AWARD PROCESS:

This solicitation provides information necessary to prepare and submit qualifications for consideration and ranking by the City. By submitting its Statement of Qualifications (SOQ) in response to this RFQ, Respondent accepts the evaluation process as outlined in the following section, acknowledges, and accepts that determination of the “most qualified” firm may require subjective judgements by the City.

**5.1.1** A selection committee consisting of City of New Braunfels internal department staff will follow the process below for the selection.

#### Two Step Process

- **Step 1:** Review, analyze and evaluate the of Statements of Qualifications (SOQs).
  - All respondents' SOQs will be ranked based upon the selection criteria established in the solicitation.
  - The selection committee will rank the firms in order of the most qualified, based on demonstrated competence and qualifications to perform the services and then make a determination based upon the final ranking.
  - City staff may select short-listed firms based on an evaluation of the written materials submitted. Short-listed firms may be asked to submit additional information and may be interviewed where they may give a presentation and answer questions.
- **Step 2:** Fee Proposal and Contract Negotiations.
  - City staff will initiate negotiations with the top-ranked respondent to develop a finalized scope of work and cost proposal.
  - The selection committee will make a recommendation to the City Council for award of a contract.
  - The contract will be subject to approval by the New Braunfels' City Council.

**5.1.2** Professional services will be procured in accordance with Chapter 2254 of the Government Code, Title 10, Subchapter A, Professional Services. Selection of the most highly qualified respondent(s) will be made based on demonstrated competence and qualifications as determined by the City of New Braunfels based on the Qualifications submitted in response to this solicitation.

**5.1.3** This solicitation does not constitute a commitment by the City to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related-work by any the submitter. The City reserves the right to waive responses to any part of this request if, in its sole judgment, it determines that it is in the best interests of the City to do so. The City may require any submitter to participate in negotiations and to submit such other information or documentation as it may deem necessary as conditions of awarding a contract. The City reserves the right to vary or waive requirements for different submitters as shall fit the City's needs.

### 5.2 SELECTION CRITERIA:

The City of New Braunfels will review all Statement of Qualifications (SOQs) submitted in response to this solicitation using the criteria presented below and rate each firm by category. The firm will be recommended

for award by City Council based upon the published selected criteria noted below. The evaluation committee recommendations are subject to approval by the City of New Braunfels City Council.

**5.2.1 Evaluation Standard; Evaluation Committee.** A committee comprised of City of New Braunfels staff will evaluate the SOQs submitted. SOQs will be evaluated on evidence of understanding of the issues and challenges, the objectives to be achieved, and the technical and administrative capabilities in relation to the needs of the project. The following criteria are those that will be applied in the evaluation of the SOQ:

**Evaluation Criteria:**

Limit response to 4 double-sided or 8 single-sided pages and minimum 10-pt font.

• **30 Points: Qualifications – PROVIDE IN TAB 3**

The extent to which the firm has personnel with the necessary relevant experience and training to perform the work being requested through this solicitation. Please provide resumes of key personnel to work on this contract. Provide all information you wish the City to consider regarding your firm's capabilities. List any sub-consultants intended to be used and a brief description of their qualifications, expertise, licensing, and/or certification.

• **40 Points: Previous Experience/Performance – PROVIDE IN TAB 4**

Experience with similar projects. Prior performance with the City of New Braunfels may also be a consideration. Include brief descriptions of at least four to five similar *projects* previously conducted, including current status, experience utilizing illustrations to convey ideas, land use concepts, and development/redevelopment scenarios.

• **30 Points: Recommended Approach to Project – PROVIDE IN TAB 5**

The firm shall submit information in a brief narrative that clearly and concisely describes the organization and approach to the project. This includes a proposed scope of work and a timeline for major tasks.

• **15 Points: Interviews (OPTIONAL)**

The City may determine that it is necessary to interview short-listed firms prior to making a recommendation to the City Council. Staff intends to use the following guidelines for the option process:

- The number of firms interviewed will depend on the closeness of the scores following evaluation of the written proposals.
- Staff will consider significant gaps in point separation between the top ranked firms in determining the number of firms to be interviewed.
- Only firms that are considered qualified to perform the work, on the basis of their written proposal, will be invited for interviews.
- No more than five firms will be interviewed.
- Staff may conduct interviews in other cases where staff believes it is in the best interest of the City.
- The City reserves the right to determine whether an interview will be conducted for every solicitation/project.

• **Pass/Fail: Availability (PROVIDE IN TAB 2)** –The firm must be able to start the project immediately and complete all work as specified. Please include availability and ability to

commit to successful and expeditious completion of the management and administrative work.

**TOTAL POSSIBLE POINTS: 100 (up to 115 if interviews are conducted)**

**5.2.2** The City reserves the right to reject any or all submittals, to waive informalities and accept the submittal that the Owner believes is the most advantageous to the public interest and in keeping with the local government project procedures.

**5.2.3** For this RFQ, Respondent's qualifications will be evaluated, and the most qualified Respondent will be selected, subject to negotiation of fair and reasonable compensation. Negotiations may be undertaken with the service provider whose SOQ best addresses the needs of the proposed project and demonstrates the ability and experience to perform the work. Award of the contract will be to the responsive service provider whose SOQ is most advantageous to the City.

**5.2.4 References:** Contact information for client references must be current. Please include contracts awarded to your company as referenced in Section 4.4.5, Project Experience, complete with a current point of contact for the client, telephone number, email address if available, summary of the work performed, and a contract term.

**5.2.5 SUBCONTRACTING PROPOSAL**

If subcontracting with another company or an individual on this project, this must be identified in your proposal, and the subcontractor's credentials must be submitted with your proposal for the City's review and evaluation consideration.

**SOQ Form:** Responses of excessive length or complexity are discouraged. The City reserves the right to include the selected SOQ, or any part of the selected proposal, in the final design contract. Emphasis is on completeness and clarity of content.

**5.2.6 Other Considerations:** The City reserves the right to request additional information or consider historical information and facts, whether gained from the RFQ, references, or any other source, in the evaluation process, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent's background, personnel, experience, financial and other references, management practices, exceptions to the RFQ or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.

**5.3 LIMITATIONS:**

**5.3.1 Right to Accept or Reject.** The City reserves the right to accept or reject any or all submissions as a result of this RFQ, to negotiate with all qualified sources, or to cancel in part or its entirety if found to be in the best interest of the City. The RFQ does not commit the City to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFQ.

**5.3.2 Solicitation to Remain Subject to Acceptance.** All solicitations will remain subject to acceptance for one hundred twenty (120) days after opening without taking action.

**5.3.3 City Council Approval Required.** The City of New Braunfels City Council must approve the firm selected to provide the services requested in this RFQ. The City reserves the right to authorize contract negotiations to begin without further discussion with firms submitting a response. Therefore, each SOQ should be submitted as completely and accurately as possible. The City reserves the right to request additional data, oral discussions, or presentations in support of the written SOQ.

**5.3.4 Firm or Individual's Obligation Regarding Evaluation:**

- a. **Submission of Information.** Submitters are cautioned that it is each firm and or individual's sole responsibility to submit information related to the evaluation categories, and the City is under no obligation to solicit such information if it is not included with the SOQ. Failure of a firm or individual to submit such information may cause an adverse impact on the evaluation of the specific SOQ.
- b. **Submitter Review of RFQ.** Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFQ and their responses. Failure to do so will be at the firm and/or individual's risk and will not be a determinative factor when awarding the contract for services.

**5.3.5 Oral Non-Binding.** Any non-written representations, explanations, or instructions given by City staff or City agents are not binding and do not form a part of, or alter in any way, the RFQ, a written agreement pertinent to the RFQ, or the awarding of the contract.

**5.3.6 Lobbying Prohibited.** Proponents are prohibited from directly or indirectly communicating with City Council members regarding the Proponent's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFQ. Proponents are prohibited from contacting city staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the proponent from the selection process.

**5.4 SOQ SPECIFICATIONS:**

**5.4.1 Modification or Withdrawal of Proposal.** SOQs cannot be altered or amended after the submittal deadline. SOQs may be modified prior to the deadline only by providing a written notice (including by fax or email) to the Purchasing Representative at the address or telephone number shown herein. A submitter's SOQ may also be withdrawn by providing the same notice or in person by a submitter or the submitter's authorized agent, providing the agents identify is made known and the agent signs a receipt reflecting the SOQ is being withdrawn. **HOWEVER, IN THE EVENT OF WITHDRAWAL, THE SUBMITTER WILL NOT BE ALLOWED TO RESUBMIT.** This provision does not change the common law right of a firm or individual to withdraw an SOQ due to a material mistake in the SOQ.

**5.4.2 Inquiries.** In order to ensure fair and objective evaluation, all questions related to this RFQ should be addressed only to the persons named in Section 4.3 of this solicitation.

**5.4.3 RFQ Interpretation; Addendum.** Any interpretations, corrections, or changes to this RFQ will be made by addenda through:

- <http://www.bidnetdirect.com/texas>
- and the City Website: <http://www.nbtexas.org>

Submitters shall acknowledge receipt of all addenda per the instructions to be attached to addenda.

## SECTION 6 - CONTRACT TERMS AND CONDITIONS

**6.1** This section will apply to the firm or individual ultimately invited to submit a cost proposal and to negotiate a final contract. These terms and conditions are presented for your agreement or your opportunity to take exception. Your response to these terms will be the basis for beginning contract negotiations should your firm be selected to submit a cost proposal.

**6.2 Contract.** There will be a written contract executed for services as needed. The contracted firm will be selected based on the highest final score and any other criteria as outlined within the RFQ. In the event that negotiations are conducted, and an agreement cannot be reached, the City reserves the right to enter into negotiations with the next highest ranked proponent without the need to repeat the formal solicitation process. After negotiation with the top-ranked proposer and upon staff recommendation, a contract will be defined, and the contract will be presented to the New Braunfels City Council. The New Braunfels City Council will make the final award of a contract for the services to be performed in accordance with this RFQ. Submission of a SOQ indicates acceptance by the firm of the conditions contained in this request for qualifications unless clearly and specifically noted in the SOQ submitted and confirmed in the contract between the City of New Braunfels and the firm selected. The City of New Braunfels reserves the right without prejudice to reject any or all Statements of Qualification.

### 6.3 ELEMENTS OF CONTRACT

1. **RFQ.** This Request for Qualifications is an invitation for individuals and companies to submit Statements of Qualifications (SOQs) only.
2. **SOQ is an Indication of Ability to Perform Requested Services.** The SOQ submitted by a firm or individual is an indication of the ability of the firm or individual to perform the requested services.
3. **Award is Acceptance.** The selection of a firm or individual and award of a contract by the New Braunfels' City Council based upon acceptance on the part of the City, thereby resulting in a binding contract between the City and the selected firm or individual.
4. **Consideration.** Consideration consists of the services to be performed under the contract awarded in exchange for compensation, based upon a final negotiated price, to be paid by the City to the selected firm or individual.
5. **Agreement; Exceptions.**
  - a. Submission of an SOQ is a representation by a submitter that the submitting firm or individual agrees to the terms, conditions, and other provisions contained in the RFQ, unless the submitter clearly and specifically presents in its SOQ any exceptions to the terms, conditions, and other provisions contained in the RFQ.
  - b. Exceptions presented in an SOQ are not to be considered incorporated into the contract between the City and the selected firm or individual unless and until the City agrees to accept such exceptions.
  - c. The selected firm must acknowledge and agree that the negotiated contract resulting from this RFQ includes the terms, conditions, and other provisions contained in the RFQ, the SOQ selected (including any exceptions accepted by the City) which is

acceptable to the City and is not in conflict or contravention of the RFQ, and any other documents mutually agreed upon by the City and the selected firm or individual.

- d. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the RFQ or the resulting negotiated contract.

#### **6.4 CONTRACT CHANGES**

The City Purchasing Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any of the following:

- a) Description of services to be performed
- b) Time of performance (i.e. hours of day, days of week, etc.)
- c) Place of performance of the services
- d) Correction of errors of a general administrative nature or other mistakes, the correction that does not affect the scope of the contract or does not result in expense to the Contractor.

If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract, whether or not changed by the order, the City will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract. The Contractor must submit any "Proposal for adjustment" under this clause within 30 days from the date of receipt of the written order. However, if the City decides that the facts justify it, the City may receive and act upon a Proposal submitted before final payment of the contract.

#### **6.5 RIGHT TO TERMINATE; NOTICE REQUIREMENT**

The City reserves the right to terminate the contract with the selected Firm or Individual for any reason or for no reason (without cause) during the term of the contract, or during any renewal, extension or amendment, by giving thirty (30) days written notice of such intention to terminate the contract to the selected submitter.

#### **6.6 SELECTED FIRM OR INDIVIDU'S OBLIGATION TO MAKE REPORTS**

The Firm or Individual selected and awarded a contract under this RFQ shall be obligated as follows:

- a. The selected Firm or Individual shall advise the City of errors or other discrepancies coming under observation during the progress of the services performed under the contract.
- b. The selected Firm or Individual shall submit monthly reports to the City's designated contract manager.

#### **6.7 ASSIGNMENT; TRANSFER**

The selected Firm or Individual shall not sell, assign, transfer, or convey any contract or other benefits resulting from this RFQ, in whole or in part, without the prior written consent of the City of New Braunfels City Council.

## 6.8 FORCE MAJEURE

- a. In the event performance by the selected Firm or Individual of its obligations under this contract shall be interrupted or delayed by or as a consequence of a fire, flood, or other act of God, war, insurrection, civil disturbance, or act of state, the selected Firm or Individual shall be excused from such performance for the period of time such occurrence shall have lasted or such period as is reasonably necessary to rebuild or take other action necessary to resume performance. The period of time reasonably necessary to rebuild or take other action necessary to resume performance shall be as determined by the agreement of the parties, which agreement shall be negotiated and arrived at in good faith.
- b. Selected Firm or Individual shall notify the City of any matter covered above, the occurrence of which interferes or threatens to interfere with the performance of any of its obligations under the contract. Upon such notice, the selected Firm or Individual and the City shall consult and cooperate as to measures which may be taken to overcome the interference or as to alternative measures which may be undertaken by the parties with a view to the continued performance of the contract.

## 6.9 INSURANCE AND LIABILITY

During the period of this contract, Contractor will maintain at his expense, insurance with limits not less than those prescribed below. Contractor further agrees to indemnify, defend, and hold City of New Braunfels harmless from any and all causes of action arising from this contract. With respect to required insurance, Contractor will:

1. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
2. Provide City of New Braunfels a waiver of subrogation. Contractor's workers' compensation, employers' liability, commercial automobile liability, CGL, excess liability, professional liability, and builder's risk insurance policies will be endorsed to waive all rights of subrogation in favor of the Owner Group. With respect to all such policies, Contractor waives any and all rights of recovery or subrogation against the Owner Group.
3. Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
4. Provide a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award to the City's Finance Department, to the attention of the Purchasing Representative noted on Page 1 of this solicitation.
5. Submit a certificate of insurance reflecting coverage as follows:
  - a. Automobile Liability

Bodily Injury/Property Damage	-	\$1,000,000
(combined single limit, each incident)		
Personal Injury Protection (PIP)	-	\$ 5,000
  - b. Commercial General Liability (Including Contractual Liability)

General Aggregate	-	\$1,000,000
Products/Completed Operations Aggregate	-	\$1,000,000
Each Occurrence	-	\$ 500,000
Personal/Advertising Injury	-	\$ 500,000
Medical Payments (Any One Person)	-	\$ 5,000
Property Damage	-	\$ 100,000

c. <u>Professional Liability Errors and Omissions</u>		
Per Occurrence	-	\$ 300,000
Aggregate	-	\$ 500,000
d. <u>Worker's Compensation</u>		
Employers Liability	-	As Statutorily required
Each Accident	-	\$1,000,000
Policy Limit by Disease	-	\$1,000,000
Each Employee by Disease	-	\$1,000,000

By submittal to this RFQ, all firms are agreeing to the City's insurance coverage requirements. Proof of insurance coverage will be required at time of project assignment and must be received by the City prior to any work commencing on City property.

## 6.10 PAYMENT AND INVOICING REQUIREMENTS

(a) Payments. Payments will be made by check or warrant by City upon satisfactory delivery of services and submission and acceptance of Contractor's INVOICE to the address below, or as indicated on Purchase Order.

ACCOUNTS PAYABLE Email Address: [AccountingTechnicians@nbtexas.org](mailto:AccountingTechnicians@nbtexas.org)  
550 LANDA STREET  
NEW BRAUNFELS, TEXAS 78130  
Phone Number: (830) 221-4380

1. All payment terms will be "Net 30 Days" unless otherwise specified in the solicitation.
2. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
3. The City may withhold or set off the entire payment or part of any payment otherwise due the Vendor to such extent as may be necessary on account of:
  - a. Reasonable evidence that the Vendor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - b. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

(b) Invoices. The City agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The City does not agree to the payment of late charges or finance charges assessed by the vendor for any reason.

Vendor must provide adequate detail on invoice for the City to review and approve. The City reserves the right to request and receive additional detail when needed. The following data shall accompany monthly invoices:

1. Date(s) of Service and Locations Serviced
2. Contract Number
3. Any other data sharing as required by the Agreement.

- (c) **Assign Payment.** In a contract award exceeding Five Thousand Dollars (\$5000.00), you may assign payment to a bank, trust company or other financing institution, including any Federal lending agency by prior written approval and authorization through the City Manager's Office. Payment by City can be made only to one party. Assignments that do not conform to these terms will not be recognized.
- (d) **Novation/Name Change.** If you change your name or ownership (NOVATION), notify the City's Purchasing Representative immediately. The change must be approved by the City Manager before any change can be recognized in the contract.

#### **6.11 INDEPENDENT CONTRACTOR**

The selected Firm or Individual will be an independent contractor under the contract. Professional services provided by the selected Firm or Individual shall be by the employees or authorized subcontractors of the selected Firm or Individual and subject to supervision by the selected Firm or Individual, and not as officers, employees or agents of the City. Selected Firm or Individual will be required and agrees to comply with all state and federal employment laws as well as all other federal, state and local laws, rules and regulations affecting the performance of all obligations taken herein.

#### **6.12 SUSTAINED DAMAGES**

In the event the City terminates the awarded contract for any reason, the selected Firm or Individual shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the contract by the selected Firm or Individual or otherwise, and the City may withhold any payments to the selected Firm or Individual for the purpose of an offset until such time as the amount of damages due the City from the selected Firm or Individual can be determined.

#### **6.13 CONFIDENTIALITY OF DOCUMENTS**

- a. ALL STATEMENTS OF QUALIFICATION SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT.
- b. In the event a request for public information is filed with the City, which involves a Firm or Individual's proprietary information submitted to the City in a proposal, the Firm or Individual affected by such public information request will be notified by the City of the request in order to give the affected Firm or Individual an opportunity to respond to the request.
- c. **On each page where confidential information appears, the Firm or Individual must label the confidential information. Failure to so label the confidential information shall be considered as a waiver of any confidentiality rights or interests by said Firm or Individual.**
- d. Marking your entire SOQ CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.

#### **6.14 INDEMNIFICATION**

Consultant hereby agrees to protect, indemnify and hold harmless the City, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to

property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of Consultant, its officers, employees, servants, agents or subcontractors, or anyone else under Consultant's, direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of any work or services called for by this Agreement, or from conditions created by the performance or non-performance of said work or services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, Consultant shall be obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

Consultant is not responsible for the actions of the City's contractor to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of the final plans by the City shall not constitute nor be deemed a release of this responsibility and liability of Consultant, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by Consultant, its employees, contractor, agents and consultants.

Consultant agrees that it is an independent contractor and not an agent of the City, and that Consultant is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve City of any responsibility or liability from treating Consultant's employees as employees of City for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. Consultant further agrees to indemnify and hold City harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of Consultant.

Consultant shall defend and indemnify Indemnitees against and hold City and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by Consultant in performing this Agreement.

#### **6.15 MISCELLANEOUS**

- a. All costs directly or indirectly related to the preparation of a response to this SOQ shall be the sole responsibility of and shall be borne by the firm.
- b. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Firm or Individuals, or to allow corrections of errors or omissions.
- c. The City reserves the right to retain all proposals submitted and to use non-confidential information in a SOQ regardless of whether or not that SOQ is selected.
- d. Each SOQ shall state that it is valid for a period of one hundred twenty (120) days from the date of opening of the SOQ by the City.

#### **6.16 NON-NEGOTIABLE TERMS**

The following terms or conditions are not negotiable:

- a. **Unfunded Liability.** The City will not incur a debt or obligation to pay selected Firm or Individual any amounts the City does not have the current funds available to pay, unless the contract includes a provision for the City to appropriate funding for the debt or obligation.
- b. **Advance Payments.** The City will not make advance payments to a selected Firm or Individual or any third party pursuant to this RFQ or resulting contract.
- c. **Gift of Public Property.** The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Firm or Individual.
- d. **Procurement Laws.** The City will not agree to any terms or conditions that cause the City to violate any federal, Texas, or local procurement laws, including its own charter.
- e. **Limitation of Liability.** The City will not agree to allow the selected Firm or Individual to limit its liability for breach or default of contract to the contract amount or to the amount the City has paid up to the time of the breach or default.
- f. **Attorney's fees; Legal Costs.** The City will not agree to pay the selected Firm or Individual's attorney's fees or other legal costs under any circumstances.
- g. **Delinquent Payments; Interest.** The City will not consider a payment delinquent, which is made within 30 days of receipt of the selected Firm or Individual's invoice, in accordance with Texas law. If the City does not pay what is due and owing within the 30 days, the City will not agree to pay more than 1% interest per month on the overdue amount, in accordance with Texas law.
- h. **Venue; Applicable Law.** This RFQ and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the RFQ are fully performable in Comal County, Texas and venue for any dispute regarding contract shall be in Comal County, Texas.

#### **6.17 CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)**

In accordance with Chapter 176 of the Texas Local Government Code, “Disclosure of Certain Relationships with Local Government Officers,” persons, or their agents who seek to who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a **Conflict of Interest Questionnaire (Form CIQ)** with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

**Form CIQ** is available from the Texas Ethics Commission by accessing the following web address: [https://www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm)

The Conflict of Interest Questionnaire (Form CIQ) is required to be filed within 7 business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for qualifications correspondence or other writing related to a potential agreement with the City.

If requested in the solicitation document, all Respondents are to submit a completed Conflict of Interest Questionnaire (Form CIQ) with their response in addition to submitting a completed Form CIQ to the office of the City Secretary located at 550 Landa Street; New Braunfels, Texas 78130.

#### **6.17. CERTIFICATE OF INTERESTED PARTIES (FORM 1295)**

A proponent that will be awarded a contract that is greater than \$25,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission (“TEC”)

website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed and copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

**VENDOR CERTIFICATIONS**

The Proposer is required to submit the following information to Owner for consideration:

Provide responses that are clear and comprehensive.

Company name: \_\_\_\_\_

Permanent main office address: \_\_\_\_\_  
Street \_\_\_\_\_ City, ST \_\_\_\_\_ ZIP \_\_\_\_\_

Tax ID No.: \_\_\_\_\_

1. Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in law suits, contracts defaulted or filed for bankruptcy.
  
2. Form of ownership:  Proprietorship  Partnership  Corporation  Other (specify) \_\_\_\_\_

**DEBARMENT/SUSPENSION INFORMATION:**

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?  Yes  No

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

**CERTIFICATIONS:**

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.  Yes  No
  
- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made
  1. to influence the solicitation process or the execution of the Contract to the detriment of Owner,
  2. to establish Cost Estimate or Contract prices at artificial non-competitive levels, or
  3. to deprive Owner of the benefits of free and open competition;
- C. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owner, a purpose of which is to establish Cost Estimates at artificial, non-competitive levels; and
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

## 2. NON-COLLUSION CERTIFICATION:

A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's cost estimate?  Yes  No

1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
2. That your cost estimate is genuine and is not a collusive or sham cost estimate;
3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost estimate, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost estimate or in any other cost estimate, or to secure through any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
4. The prices quoted in your cost estimate are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

## 3. HOUSE BILL 89 VERIFICATION

A. Contractor shall verify that it's named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270:  Yes  No

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

**SEE NEXT PAGE FOR ACKNOWLEDGEMENT**

**ACKNOWLEDGEMENT**

THE STATE  
OF TEXAS  
COUNTY OF  
COMAL

I certify that I have read all of the specifications and general RFQ requirements and do here by certify that all items submitted meet specifications. I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my response to this solicitation to be rejected.

---

**Company's Name**

---

**Signature, Authorized Representative of Respondent**

---

**Title**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT**  
**PRELIMINARY DESIGN OF SOUTH CASTELL AVENUE**

THIS AGREEMENT is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as CITY and \_\_\_\_\_, hereinafter referred to as "CONSULTANT".

WHEREAS, CITY desires CONSULTANT to perform certain work and services set forth in Scope of Services, marked Exhibit "A", and attached hereto and incorporated herein.

WHEREAS, the CONSULTANT has expressed a willingness to perform said work and services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Article II, of this Agreement.

NOW, THEREFORE, all parties agree as follows:

**I. GENERAL**

CONSULTANT shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all services set forth in Article II hereof for the CITY in accordance with the terms, conditions and provisions of the Scope of Services, marked Exhibit "A", and attached hereto and incorporated herein for all purposes. CITY may, at any time, stop any services by the CONSULTANT upon giving CONSULTANT written notice. CONSULTANT shall be bound to CITY by the terms, conditions and responsibilities toward the CITY for CONSULTANT'S services set forth in this Agreement.

**II. SERVICES**

A. The following services, when authorized in writing by a Notice to Proceed, shall be performed by the CONSULTANT in accordance with the CITY'S requirements:

Consultant to perform services related to the creation of a Unified Development Code for the City of New Braunfels, as outlined in RFQ 21-011 and as negotiated with the City and specified in Scope of Work, Exhibit "A", attached hereto and incorporated into this Agreement.

B. CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.

C. Neither CITY'S review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver if any rights under this Agreement or if any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

D. The rights and remedies of CITY under this Agreement are as provided by law.

**III. PAYMENT**

The parties agree that CONSULTANT shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "B". The contract amount specified shall not exceed \$\_\_\_\_\_. The contract amount specified in Exhibit "B" shall not be exceeded without written permission of the CITY.

**IV. TIME FOR PERFORMANCE**

A. CONSULTANT agrees to commence work immediately upon execution of this Agreement and to proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT, to completion as described in the Completion Schedule, attached hereto as Exhibit "C" and hereby made a part of this Agreement.

B. In the event CONSULTANT'S performance of this Agreement is delayed or interfered with by acts of the CITY or others, CONSULTANT may request an extension of time for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays unless such delays exceed 90 days.

C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to the CONSULTANT, unless CONSULTANT shall have made written request upon CITY for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless CITY and CONSULTANT have agreed in writing upon the allowance of additional time to be made.

**V. DOCUMENTS**

A. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer files, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of the CITY. All instruments of service shall be professionally sealed as may be required by law or by CITY.

B. Such documents of service, together with necessary supporting documents, shall be delivered to CITY, and CITY shall have unlimited rights, for the benefit of CITY, in all instruments of service, including the right to use same on any other work of CITY without additional cost to CITY. If, in the event CITY uses such instruments of service on any work of CITY other than that specified in the Scope of Services, attached as Exhibit "A", provided CONSULTANT completes this Agreement, under those circumstances CITY hereby agrees to protect, defend, indemnify and hold harmless the CONSULTANT, their officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of service with respect to such other work except where CONSULTANT participates in such other work.

C. CONSULTANT agrees to and does hereby grant to CITY a royalty-free license to all such instruments of service which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. CONSULTANT, upon request, agrees to furnish the originals of all such instruments including electronic design files of service to the CITY.

D. All text documents supplied to CITY as provided herein shall be in Word 2018 or fully compatible with Word 2017. Unless otherwise requested all design drawings supplied to CITY as provided herein shall be in Adobe PDF and AutoCAD compatible DWG format, if applicable.

## **VI. TERMINATION**

A. CITY or the CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the CONSULTANT. In the event suspension or termination is without cause, payment to the CONSULTANT, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.

B. Should the CITY require a modification of its contract with CONSULTANT, and in the event CITY and CONSULTANT fail to agree upon a modification to this Agreement, CITY or the CONSULTANT shall have the option of terminating this Agreement. Payment to CONSULTANT shall be made by the CITY in accordance with the terms of this Agreement, for the services mutually agreed upon by the CITY and the CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

## **VII. INSURANCE**

A. CONSULTANT shall provide and maintain Workers Compensation with statutory limits.

B. CONSULTANT shall provide and maintain in full force and effect during the time of this Agreement, auto insurance (including, but not limited to, insurance covering the operation of owned and non-owned automobiles, trucks and other vehicles) protecting CONSULTANT and CITY as an additional Insured with limits not less than \$500,000/\$1,000,000/\$250,000.

C. CONSULTANT shall provide Commercial General Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate. Insurance covering damages to property shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000). The general Liability Insurance must name the CITY as an additional Insured.

D. CONSULTANT shall also provide and maintain Professional Liability Errors and Omissions Insurance coverage to protect CONSULTANT and CITY from liability arising out of the performance of professional services, if any, under this Agreement. Such coverage shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) aggregate. Such insurance shall be kept in effect for four years after the completion of the contract. If CONSULTANT fails to maintain the insurance covered during that time, CITY may pay the premiums to keep the insurance in effect and recover the cost from the CONSULTANT.

E. A signed Certificate of Insurance, satisfactory to CITY, showing compliance with the requirements of this Article shall be furnished to CITY before any services are performed. Such Certificate shall provide 30 days written notice to CITY prior to the cancellation or modification of any insurance referred to therein and continue to issue such certificate for four years after completion of the contract.

**VIII. INDEMNIFICATION FOR INJURY AND PERFORMANCE**

A. CONSULTANT further specifically obligates itself to CITY in the following respects, to-wit:

B. The CONSULTANT hereby agrees to protect, indemnify and hold harmless the CITY, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of the CONSULTANT, its officers, employees, servants, agents or subcontractors, or anyone else under the CONSULTANT'S, direction and control, and arising out of, resulting from, or caused by the negligent performance or failure of performance of any work or services called for by this Agreement, or from conditions created by the negligent performance or non-performance of said work or services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, the CONSULTANT shall be obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

C. The CONSULTANT is not responsible for the actions of the CITY'S contractor to perform the construction of the improvements covered under this Agreement.

D. Acceptance and approval of the final plans by the CITY shall not constitute nor be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by CONSULTANT, its employees, contractor, agents and consultants.

**IX. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

CONSULTANT agrees that it is an independent contractor and not an agent of the CITY, and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT'S employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. CONSULTANT further agrees to indemnify and hold CITY harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of CONSULTANT.

**X. INDEMNIFICATION FOR PERFORMANCE**

CONSULTANT shall defend and indemnify Indemnitees against and hold CITY and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by CONSULTANT in performing this Agreement.

**XI. ASSIGNMENT**

CONSULTANT shall not assign or sublet this Agreement or any part thereof, without the written consent of City Manager. Sale of more than 50% ownership of CONSULTANT shall be construed as an assignment.

**XII. APPLICABLE LAWS**

CONSULTANT shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes, including the Americans With Disabilities Act, relating or applicable to services to be performed under this Agreement.

This Agreement is performable in the State of Texas and shall be governed by the laws of the State of Texas. Venue on any suit hereunder shall be in Comal County, Texas.

**XIII. DEFAULT OF CONSULTANT**

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by CITY to CONSULTANT, CITY may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may proceed to complete the services in any manner deemed proper by CITY, either by the use of its own forces or by resubmitting to others. In either event, the CONSULTANT shall be liable for all costs in excess of the total contract price under this Agreement incurred to complete the services herein provided for and the costs so incurred may be deducted and paid by the owner out of such monies as may be due or that may thereafter become due to CONSULTANT under and by virtue of this Agreement.

B. CITY may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of the CONSULTANT.

**XIV. ADJUSTMENTS IN SERVICES**

No claims for extra services, additional services or changes in the services will be made by CONSULTANT without a written agreement with CITY prior to the performance of such services.

**XV. EXECUTION BECOMES EFFECTIVE**

This Agreement will be effective upon execution of the contract by and between CONSULTANT and CITY.

**XVI. AGREEMENT AMENDMENTS**

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

**XVII. GENDER AND NUMBER**

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely.

**XVIII. COMPLETE CONTRACT**

This Agreement, including the Exhibits lettered "A" through "C", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

**XIX. NOTICES AND AUTHORITY**

A. The CONSULTANT agrees to send all notices required under this Agreement to the City Manager of the City of New Braunfels, or his designee, at 550 Landa Street, New Braunfels, Texas 78130. The CONSULTANT understands that only the City Manager or his designee has the authority to represent the CITY or bind the CITY under this Agreement.

B. The CITY agrees to send all notices required under this Agreement to the CONSULTANT at:

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

(Signatures on Following Page)

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

**OWNER**  
THE CITY OF NEW BRAUNFELS

**FIRM'S COMPANY NAME**

BY: \_\_\_\_\_  
Robert Camareno

BY: \_\_\_\_\_

TITLE: CITY MANAGER

TITLE: \_\_\_\_\_

ADDRESS:  
550 Landa Street  
New Braunfels, TX 78130

ADDRESS:  
\_\_\_\_\_

**ATTACHMENT "A"**  
**SERVICES TO BE PROVIDED BY THE CITY OF NEW BRAUNFELS**

The City of New Braunfels will furnish to the Engineer the follow items/information for the XXXX project.

- Data, if available, from the City of New Braunfels, including “as-built plans”, existing schematics, right-of-way maps, SUE mapping, existing cross sections, existing planimetric mapping, environmental documents, existing channel and drainage easement data, identified endangered species, identified hazardous material sites, current unit bid price information.
- Traffic Impact Analysis reports, existing traffic volumes, and accident data as provided by the City.
- Geotechnical Reports prepared by others for the adjacent subdivisions.
- Documents for existing and proposed development along the project, thoroughfare planning, budget, and local ordinances related to project development.
- Expedited reviews as needed to meet the project schedule.
- Stakeholder list of interested parties
- Known State / TxDOT improvements within the affected areas
- Scheduling and coordinating meetings with stakeholder
- Right of Entry:
  - a. Develop letters or other materials for seeking right of entry. Letters or other materials seeking right of entry shall be distributed the City. Letters or other materials seeking right of entry shall contain explicit reference to the kinds of activities for which right of entry is requested and an indication of the impacts (if any) that will result from performance of services.
  - b. Right of entry permission shall be written and signed by the landowner then will be provide to the Engineer.