

# CITY OF NEW BRAUNFELS



## REQUEST FOR PROPOSALS

**Solicitation # RFP 24-011**

**Legal Services – Case Resolution and Delinquent Case Collections**

Location: New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130

**Direct all communications to:**

New Braunfels Purchasing Department:

Barbara Coleman

Phone: 830-221-4389

Email: [bcoleman@newbraunfels.gov](mailto:bcoleman@newbraunfels.gov)



## SOLICITATION AND OFFER

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

**Solicitation Number: RFP 24-011**

☐ Invitation for Bid (IFB)

Date Issued:

**Case Resolution and Delinquent Account Collections**

☒ Request for Proposals (RFP)

**February 16, 2024**

### SOLICITATION

Questions may be submitted until **March 1, 2024, 5:00 P.M. (Central Time)**

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

Submissions will be received at the office of the City Secretary at the address shown above until: **3:00 P.M. (CST), March 12, 2024**

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

For information regarding this solicitation, contact:

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

Barbara Coleman,  
Purchasing  
Manager

Email: [bcoleman@newbraunfels.gov](mailto:bcoleman@newbraunfels.gov)

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.)

RFP's must be submitted by persons authorized to commit the responding qualified respondent to a procurement contract or agreement. By submitting your written proposal, you represent and warrant that your submitted proposal does not contain information that will violate the rights of any third party.

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 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; ELECTRONIC OR MANUAL SIGNATURES WILL BE ACCEPTED. SIGNATURE SHOULD ALSO BE REFLECTED ON USB COPY OR ELECTRONIC SUBMISSION.

Name  
and  
Address  
of Respondent:

Name and Title of Person Authorized to Sign Offer:

E-Mail Address:

Phone Number:

Fax Number:

Signature:

Date:

Name, Address, email, and Telephone Number of  
Person authorized to conduct negotiations on behalf  
of Respondent.  
(Applies to Request for Proposal only)

**SECTION 2 – TABLE OF CONTENTS**

SECTION 1 – SOLICITATION AND OFFER FORM	1
SECTION 2 – TABLE OF CONTENTS	2
SECTION 3 – INSTRUCTIONS FOR PROPOSAL	3
SECTION 4 – PROJECT DESCRIPTION AND SCOPE OF WORK	8
SECTION 5 – QUALIFICATIONS AND EVALUATION CRITERIA	13
SECTION 6 – CONTRACT TERMS AND CONDITIONS	17
ATTACHMENT A – COST PROPOSAL FORM	18
ATTACHMENT B - COMPANY INFORMATION AND VENDOR CERTIFICATIONS	20
ATTACHMENT C - EXCEPTIONS AND ALTERNATIVES FORM	24

**APPENDIX ONE – SAMPLE AGREEMENT**

## SECTION 3

### RFP INSTRUCTIONS FOR PROPOSAL

#### 3.1 PURPOSE

This Request for Proposal (RFP) is issued by the City of New Braunfels, (hereinafter referred to as the "City"). The purpose of this RFP is to request proposal submissions from interested and qualified service providers for Case Resolution and Delinquent Account Collections on behalf of the City's Municipal Court as more specifically described in Section 4 of this RFP.

The RFP contains submission requirements, the scope of service, period of service, terms and conditions and other pertinent information for submitting the proper and responsive proposal.

#### 3.2 AVAILABLE DOCUMENTS

Solicitation documents may be obtained from:

- the BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>
- the City of New Braunfels' website: <https://www.newbraunfels.gov/2694/Solicitations>

#### 3.3 SOLICITATION SCHEDULE

DATE	MILESTONE
February. 16, 2024	RFP issued on <a href="https://www.bidnetdirect.com/texas/city-of-new-braunfels">https://www.bidnetdirect.com/texas/city-of-new-braunfels</a> and <a href="https://www.nbtexas.org/2694/Active-Solicitations">https://www.nbtexas.org/2694/Active-Solicitations</a>
March 1, 2024	Deadline to receive questions shall be 5:00 P.M.
TBD	Release of Addendum
March 12, 2024	Proposal submission deadline/Responses Due – 3:00 P.M.
March 2024**	City Evaluation
April 2024**	Anticipated Contract Award

**\*\*City Evaluation and Anticipated Contract Award dates are estimates only and are subject to change without further notice.**

#### 3.4 SUBMISSION OF PROPOSALS

- (a) Electronic Bidding. The City of New Braunfels has partnered with its third-party vendor, Texas Purchasing Group (BidNet Direct) as its e-procurement site. For this Request for Proposal, electronic bid submission is another option available to Proposers. The link to BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

You must register on their site prior to your electronic submission. If you have any problems completing your vendor registration or submitting your electronic bid, please contact BidNet at (800) 835-4603, Option 2, to speak with live customer support.

**If submitting an electronic bid through BidNet, an original hardcopy and USB will not be required.**

- (b) Deliver your Proposal, or changes to your Proposal, in SEALED ENVELOPES OR PACKAGES identified on outside as a Request for Proposal to Owner, with Respondent's name and address, and solicitation name. Failure to submit Proposal in this manner may subject Respondent to disqualification. **Proposal may be delivered in person to the New Braunfels City Hall, or by Express Mail or delivery service to:**

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

The outside of the Proposal envelope or package **must state**:

**"RFP 24-011 "Case Resolution and Delinquent Account Collections"**

It is the sole responsibility of the respondent to ensure timely delivery of the Proposal. Owner 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. **PROPOSALS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE ACCEPTED OR CONSIDERED.**

- (c) An authorized official of the firm must print or type their name and **SIGN THE ORIGINAL PROPOSAL, AND USB COPY MUST REFLECT THE SAME SIGNATURE.**
- (d) Proposals may not be withdrawn after the time set for the closing, unless approved by the City.
- (e) Your offer or a modification to your offer is LATE if received after the time set for Proposal opening and will not be considered.
- (f) To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that Proposals be submitted with **one (1) original master (marked 'original'), and one signed USB electronic copy of all documents listed below. If submitting an electronic bid through BidNet, an original hardcopy and USB will not be required.**

**Each Proposal completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity, will include the following in one envelope/package:**

- **TAB 1 - Solicitation and Offer Form:** Complete and sign form located on Page 1.
- **TAB 2 – Attachment A – Cost Proposal Form**
- **TAB 3 - Cover Letter** - Name and address of the Respondent, as well as a brief description of the company and its history, and how this makes the Proposer qualified for this bid.
- **TAB 4 - ATTACHMENT B – COMPANY INFORMATION AND CERTIFICATIONS**
- **TAB 5 - Experience, Qualifications, Key Personnel, and Resources** – Reference Section 5.1 1: Proposer's Qualifications, Abilities, and References)
- **TAB 6 - Additional Supporting Documentation**
  - Prime and Sub-Respondents: Conflict of Interest Form (per Section 3.14)
  - Prime Respondent: Certificate of Interested Parties – Form 1295 (per Section 3.15)
  - Prime Respondent: Proof of Insurance: One copy completed and signed. A "for information purposes only" copy is acceptable. The awarded Contractor will be required to provide their certificate of insurance prior to contract award.

- Attach copies of contractor's license, certifications, or any other documentation not referenced under another tab.
- **TAB 7 - Deviations from Request for Proposal** – (Reference Attachment C- EXCEPTIONS AND ALTERNATIVES FORM)
  - Proposer is to indicate any deviations being offered in lieu of specified language referenced in the solicitation.

### 3.5 CONTACT QUESTIONS

All *questions* concerning this solicitation shall be submitted in writing, on or before the date specified in Section 3.3: Proposal Schedule, to:

**Purchasing Representative:** Barbara Coleman, Purchasing Manager, via email  
[BColeman@newbraunfels.gov](mailto:BColeman@newbraunfels.gov)

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

Questions – RFP 24-011 Case Resolution and Delinquent Account Collections

All prospective respondents are hereby instructed to not contact any member of the City of New Braunfels' City Council, City Manager, evaluation committee, or City of New Braunfels' staff members other than the noted contact person regarding this solicitation on page 1. Any such contact may be cause for rejection of your Proposal.

### 3.6 RESPONSES TO QUESTIONS/INQUIRIES

Responses to questions/inquiries that directly affect an interpretation or change to this RFP will be issued in writing by Purchasing as an addendum and posted at:

- <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and
- the City's website <https://www.newbraunfels.gov/2694/Solicitations>

All such addenda issued by the Purchasing Representative before the time that Proposals are received shall be considered part of the RFP.

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

### 3.7 SOLICITATION UPDATES

Respondents shall be responsible for monitoring the City's website or BidNet Direct 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.

### 3.8 EXCEPTIONS AND DEVIATIONS

Any exceptions to the specifications or objectives of the solicitation document must be clearly stated in Respondent's Proposal using Attachment C.

### 3.9 COMPETITIVE PROPOSALS

Proposals will not be opened publicly to avoid disclosure of contents to competing respondents and

kept confidential during the process of negotiation. However, all Proposals will be open for public inspection after award except for trade secrets and confidential information contained in the Proposals and identified as such by the Proposer. Marking the entire Proposal as confidential and/or proprietary is not in conformance with the Texas Open Records Act.

### 3.10 PROPOSALS AND MATERIALS SUBMITTED

All Proposers who choose to participate in the selection process or respond to the RFP agree that the City owns all rights related to the materials submitted in response to this RFP. Such materials will not be returned to the respondents and may be used by the City and its designees as may be in its best interest in any manner and in any media whatsoever.

### 3.11 SAFEGUARDING OF INFORMATION AND DATA

The Contractor will safeguard all information and data provided by the City. Further, Contractor will not sell or make available data or mailing lists compiled from data received from the City without the express written approval of the City Council, through the City's Finance Department, Purchasing division, with appropriate remuneration to the City

### 3.12 WHAT IS NOT ACCEPTED

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

### 3.13 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 Proposer 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 Proposer or any third party pursuant to this RFP 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 Proposer.
- 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 Proposer 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 Proposer 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 Proposer's approved 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 RFP 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 RFP are fully performable in Comal County, Texas and venue for any dispute regarding contract shall be in Comal County, Texas.

### 3.14 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 proposal 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.

### 3.15 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

A proponent that will be awarded a contract that is greater than \$50,000 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 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.



## SECTION 4

### PROJECT DESCRIPTION AND SCOPE OF WORK

#### 4.1 BACKGROUND:

The City of New Braunfels is situated in Comal County, between the Nation's seventh (7<sup>th</sup>) largest city, San Antonio, to the south, and the Texas Capital, Austin, to the north, with easy access to each along Interstate Highway 35. Interstate Highway 10, less than ten (10) miles to the south, provides access to Houston, three (3) hours to the east.

Consistently ranked by the U.S. Census Bureau in the top Ten (10) fastest growing cities in the Nation, New Braunfels has a 2020 population of over 90,403, an increase of nearly 57%, in comparison to the 2010 population. Founded in 1845, New Braunfels has a rich history and, in light of the tremendous growth, still retains its cultural heritage which influences its architecture, community activities, branding, pride of citizenship, and way of life.

#### 4.2. SCOPE OF SERVICES

The City of New Braunfels request On-Call services to provide Case Resolution and Delinquent Account Collections as identified and needed by the City of New Braunfels.

It is the intent of this RFP to award a master services agreements to one vendor, however the City reserves the right to award to multiple vendors. The number of master agreements awarded will be determined after evaluation of proposals received through this solicitation. This proposal will primarily support the City of New Braunfels Municipal Courts System.

#### 4.3 SCOPE OF WORK

The City of New Braunfels, hereinafter referred to as City, is soliciting proposals from qualified firms experienced in legal services for the resolution of municipal court cases including delinquent case collection. Article 103.0031 of the Texas Code of Criminal Procedures allows municipalities to contract with a private attorney or public or private vendors to provide collection services. The City intends to enter into a Service Agreement (also referred to as "Contract" or "Agreement") for case resolution services which includes collections with one vendor.

The City is seeking collection services that would include working with New Braunfels Municipal Court staff to make direct contact with defendants with a goal to resolve open cases in the court, including but not necessarily limited to collection of unpaid court costs, fines, fees, forfeited bonds and amounts.

##### 4.3.1 Background and Data

It is estimated that the majority of inactive and past due cases range from a low of \$50.00 to \$1,500. It is anticipated that approximately 5,000 to 7,000 cases will be available to be pursued in the first year. The City receives filings between 11,300 to 14,000 each year and issues approximately 1,500 warrants each year.

The selected vendor will not be allowed to litigate balances exceeding a certain dollar amount on the City's behalf.

#### **4.3.2 Other Collection Opportunities**

The City may have other miscellaneous collection opportunities. An area identified for future review is collection of associated Short-Term Rentals fees. This would include multiple fees within the City supported by ordinance.

#### **4.3.3 Technical Support**

Should electronic transmission of referral and/or collection data be required, the contractor will conform to the City's Information Technology's data file naming conventions, data formatting specifications, data transfer methods and data processing schedules. The Municipal Court is currently using Tyler Technologies – Municipal Justice (formerly InCode) software, version 9. The data transfer methods typically utilized are FTP, CDRW/DVD-R CDs, email, direct internet connection, or through an interface with the Municipal Justice software, though other suggestions may be offered for consideration. The data to be contained in the data files will be coordinated by the contractor through the contract manager within Municipal Court in conjunction with City's Information Technology staff. The data transferred should be available as ASCII text formatted files or Excel .csv to facilitate import into existing third-party casing and court management software or interface directly with those software packages. The City will consider other methods of transfer that meet the needs of the court and the contractor. The other methods need to be specified in the bid presented to the City.

#### **4.3.4 General Requirements**

The general requirements listed are to be interpreted as the minimum required by the City. The contractor commits to providing services that are consistent with the City's general requirements in every regard unless an exception is clearly noted.

The contractor will perform all services as described herein unless the contractor can explain in detail that a deviation would be of material benefit to the City and provide service at least equal to that specified. The Contractor will be able to assure the security and safety of all City of New Braunfels files, documents, computer files, *etc.*

The Contractor will be licensed and bonded as necessary to collect delinquent payments in the State of Texas and comply with all applicable provisions of the Federal Fair Debt Collection Practices Act and comply with Texas State law, and the ordinances and policies of the City of New Braunfels and all practices will be conducted through ethical and lawful means with the highest level of customer service.

The Contractor must have sufficient financial capacity, working capital and other financial and management resources to perform the contract.

The Contractor and the City will mutually establish routine written procedures, within the scope of these specifications, for handling the services described herein. Such procedures are subject to the City's approval.

The City retains complete discretion over which cases, if any, that will be submitted to the Contractor for the resolution process. The City reserves the right to refer only those cases where internal collection efforts have been exhausted as well as any other cases where collection efforts may or may not have been attempted.

The City will provide cases that have been inactive for no less than 90 days which include active Arrest and Capias Pro Fine warrants and outstanding uncontested cases.

Cases will be supplied to the Contractor with a list of cases for which they may seek resolution and collect on an as-needed basis.

The City will provide contractor with copies of, or access to, the information and documentation necessary to resolve open violations. The City will be responsible for receiving the delinquent or unpaid fines, fees, forfeited bonds or restitution that are subject to the contract and for receipting same. The City will approve or reject all correspondence including text, telephone and email scripts and letters to be employed by the contractor in the pursuit of case resolution on the court's behalf.

The Contractor will maintain adequate records of the services performed and make such records available for inspection and audit by the City's staff at all times.

In the proposal, the Contractor must identify any subcontractor and how that subcontractor will be used. Any subcontracting will be reviewed to determine the responsibility of the bidder.

The contractor will list the methods of locating, identifying and notifying defendants of their failures to appear and/or unpaid fines including the process of working with the court and warrant officers to achieve successful disposition of cases. The list of methods will include all the data-bases used to locate defendants.

The contractor will identify the project manager assigned to the City and any professionals directly involved in providing services to the City in execution of contracted services and provide their direct contact phone numbers and email addresses.

The Contractor agrees to provide updates to the court with new addresses, telephone numbers, and email addresses of cases submitted to the Contractor on a routine basis agreed upon by both parties.

The Contractor will provide regular data reporting, schedule to be mutual agreed upon, of efforts and successes of resolution activity. The Contractor will include reporting samples in their proposal.

The Contractor will include any resources, personnel or financial, or other incentives provided to the Court as a part of their proposal.

#### **4.4 COMPENSATION**

The City will pay to the contractor said compensation on a routine, agreed upon, basis, in accordance with Article 103.0031 of the Texas Code of Criminal Procedure, as amended.

No compensation will be due the contractor in connection with any resolution efforts related to cases that have been appealed to a Comal County Court and adjudicated after appeal to such court.

If a person pays an amount that is less than the aggregate total to be collected under Article 103.0031 and of the Texas Code of Criminal Procedure, the allocation to the Comptroller, the City and the contractor will be reduced proportionately.

The Contractor may return to the Court, at the Court's request, all cases not resolved within one (1) year of referral by the City. Additionally, the Contractor will return any specific cases as recalled by the City as necessary. Upon return of these cases, neither party will have any obligation to the other party to this contract for these cases.

In the event any case is disposed of by acquittal or dismissal, or if the fine, cost and/or fees are discharged through performance of community service, credit for jail time served, the discretionary removal of a collection fee by the Court or pursuant to §45.0491 of the Code of Criminal Procedure, no compensation will be paid to the Contractor by the City. Furthermore, no compensation will be due to the contractor by the City when a fine, fees and/or costs are collected by the service of any peace officer of a warrant or a capias pro fine on a Defendant owing such fine, fees and/or costs. In the event the case is disposed by the defendant completing partial community service and partial payment of fine, Contractor agrees to receive less than the contracted amount.

The City retains the right to recall from a Contractor, without charge or penalty, any accounts assigned to the contractor. Upon recall by the City, no further collection efforts on recalled accounts will be undertaken by the Contractor. If the account being recalled has been reported to any credit bureau, the contractor is expected to immediately clear the customer's credit report and provide written confirmation upon request. The City will determine which accounts will be referred to an outside Contractor. These will include but are not limited to any cases eligible for collection.

Contractor will use due diligence, reasonable and ethical methods, and employ lawful means to effect collection on the City's outstanding cases and cases including adherence to all Federal and state laws governing collections.

Contractor will guarantee that every defendant holder will be dealt with in a professional and courteous manner with judicial fairness being a priority.

Contractor will return information on cases submitted for collection services including all information developed by the Contractor regarding the defendant or case holder on his/her whereabouts, as requested by the City.

Contractor will work with the City to conduct Warrant Round-Up, or Amnesty Programs as requested, requiring Contractor to send out additional notices and providing the City with an updated address list of defendants within the New Braunfels area.

Contractor will not be entitled to reimbursement for expenses incurred under the Contract.

The City will not be liable under the contract for any services which are unsatisfactory or which the City has not approved.

The successful offeror will maintain and make available for inspection, audit and /or reproduction by the City representatives or external auditor representing the City, the books, documents, and other relevant information pertaining to the collections carried out for the City and expenses of this contract.

#### **4.5 CITY REPRESENTATIVES**

The assigned City Staff are the only persons authorized to modify or make final decisions under this Contract. Any questions concerning price, time or contract terms shall be addressed with the City Municipal Court Representative and/or the Purchasing Division.

#### **4.6 COORDINATION MEETINGS AND ADMINISTRATION OF CONTRACT**

The Successful Contractors shall appoint a representative who will interface and represent the Successful Contractor in all administrative matters concerning this Contract, including correction of problems, reducing costs, etc.

#### **4.7 INSURANCE**

A certificate of existing insurance coverage shall be submitted with the response as proof of insurability. If the current coverage does not meet the qualification requirements, the Firm should request an affidavit of insurability from their insurance agent that certifies the requirements can and will be met. Failure to provide adequate insurance coverage may be cause for disqualification as non-responsive to the qualification requirements.

The selected Firm shall, within ten (10) days of notification of award and prior to commencement of work, obtain and maintain in full force and effect minimum insurance as required in the contact agreement. This insurance shall remain in force and effect throughout the duration of the contract.

## **SECTION 5 QUALIFICATIONS AND EVALUATION CRITERIA**

### **5.1 SELECTION PROCESS**

It is the intent of the City to award a contract on an exclusive basis to one respondent offering the best value to the City, based on evaluation criteria listed in this solicitation and proposer's submitted proposal.

The City's evaluation team will rank respondents meeting the evaluation criteria and the requirements of the needed services outlined in the solicitation and as outlined in the respondent's proposal.

The respondent selected for award will be awarded Master Agreements to provide services as specified.

The criteria to be considered by The City in evaluating proposals and selecting Contractor, will be those factors listed below with their relative weightings:

### **5.2 CRITERIA**

The contract will be awarded by the City to a responsible Offeror only. To qualify as responsible, an Offeror must meet the following qualifications as they relate to this request for proposals.

Each response will be reviewed before the selection process for completeness and adherence to format. A response will be considered complete if all requested sections are included in the proper order.

#### **5.2.1 Qualifications and Experience (25 Points)**

- Have a minimum of five (5) years of collection experience in the municipal court service industry for similar or larger size municipalities such as the City of New Braunfels, Texas.
- Have adequate technical and financial resources for performance.
- Have the necessary experience, organization, and technical skill in receiving/transmitting data electronically in the field of municipal court collection service cases.
- Staffing – include resume for key personnel (case rep, customer liaison) and hiring procedures.
  - Experience and stability of key staff. State the location of the office, as well as the number of professional staff employed at that office that will have primary responsibility for the service.
  - Describe the qualification and number of collection staff that will be assigned to the collection activities for the New Braunfels Municipal Court.
- Describe experience working and interfacing with clients using Incode v.9 software for municipal court operation.
- References – Provide three (3) references that are similar size and scope of service utilization as the City, preferably cities or counties.
  - Have a satisfactory record of performance in municipal collection programs.
  - All references requested in this proposal will include the name of client, name of contact person, physical address, telephone and fax numbers, and the email address of the contact person.
- Include any other experience and performance results in collections for other City fees.

#### **5.2.2 Collection Plan, Procedures and Approach (25 Points)**

- Deployment Strategy & Operational Timeline to implement contract.
- Outline steps to be taken to resolve cases including collection of delinquent court fines and fees.
- Provide detailed explanation of collection methodology including timetable of your work plan and expected rate of recovery.
- Describe the methodology for handling customer questions/problems.
- Describe the methodology for handling non-English speaking customers.
- Describe the adequacy of your telephone and text messaging resources. Provide examples of telephone and text scripts that will be used for resolving outstanding fines and costs including collecting outstanding fines and costs.
- Describe the methodology and procedure for data transfers. Identify the form and frequency of electronic data transfers both to and from your company.

**5.2.3 Reporting (25 Points)**

Provide sample reports that will detail status of efforts and other measurable metrics.

- Must be able to provide collection and financial reports monthly.
- Describe the record retention capabilities.
- Provided the following examples:
  - Examples of reports used to document results.
  - Examples of monthly reports that will be provided to the City.
  - Frequency of reporting and the content of data transmitted to the City to update individual cases.
  - Flexibility in meeting the City's reporting needs.

**5.2.4 Alternative Resources Offered (10 Points)**

- Amnesty and/or Warrant Round-Up Program samples
- Contribution to the City to employ additional resources to manage the relationship and information exchange with vendor.
- Unique promotional strategies to encourage case collection AND other resolution methods.

**5.2.5 Fee Structure Charged to the City (15 Points)**

- The Offeror's proposal must clearly explain the cost/fee structure and how the City of New Braunfels will be invoiced for collection services. The proposal must include at a minimum the following:
  - Explain how the invoice will be calculated.
  - Frequency of billing (invoice) submitted to the City.
  - Number of days allowed for payment.
  - Include additional costs for Alternative Resources Offered

- The City will pay in accordance with state law.

**5.2.6 Supplemental Consideration:**

As a supplement to the above-described criteria, City may give consideration to any additional information and documentation submitted by a Proposer if City deems such information to be relevant, and to serve the best interests of, and provide the best value to, City.

**TOTAL POSSIBLE POINTS: 100**

- 5.3 OPTIONAL-** The City may determine that it is necessary to interview short-listed firms prior to making a recommendation to the City Council. The City reserves the right to determine whether an interview will be conducted for every solicitation/project.
- 5.4 Other Considerations.** The City reserves the right to request additional information or consider historical information and facts, whether gained from the Proposal, 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 RFP or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.
- 5.5** Respondent should be aware that the contents of the successful Proposal response will become part of subsequent contractual documents.
- 5.6 Opened Proposal.** 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.
- 5.7 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 a 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.
- 5.8 LIMITATIONS**
- 5.8.1 Right to Accept or Reject.** 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. The RFP 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 RFP.
- 5.8.2 Solicitation to Remain Subject to Acceptance.** All solicitations will remain subject to acceptance for one hundred ninety (90) days after opening without taking action.
- 5.8.3 City Council Approval Required.** The City of New Braunfels City Council must approve the respondent selected to provide the services requested in this RFP. The City reserves the right to authorize contract negotiations to begin without further discussion with respondents



submitting a response. Therefore, each Proposal 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 Proposal.

**5.8.4 Respondent's Obligation Regarding Evaluation:**

- a. Submission of Information. Submitters are cautioned that it is each respondents 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 Proposal. Failure of a respondent to submit such information may cause an adverse impact on the evaluation of the specific Proposal.
- b. Submitter Review of RFP. Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFP and their responses. Failure to do so will be at the respondents' risk and will not be a determinative factor when awarding the contract for services.

**5.8.2 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 RFP, a written agreement pertinent to the RFP, or the awarding of the contract.

**5.8.3 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 RFP. 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.

**5.9 PROPOSAL SPECIFICATIONS**

**Modification or Withdrawal of Proposal.** Proposals cannot be altered or amended after the submittal deadline. Proposals may be modified prior to the deadline only by providing a written notice (by mail or email) to the Purchasing Representative at the address shown herein. A submitter's Proposal may also be withdrawn in writing by providing the same notice by a submitter or the submitter's authorized agent, providing the agents identify is made known and the agent signs the request to withdraw Proposal. **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 proposer to withdraw a Proposal due to a material mistake in the Proposal.

## SECTION 6

### CONTRACT TERMS AND CONDITIONS

#### 6.1 CONTRACT TERM

The initial contract will be for a one (1) year period commencing on date of award. The City will have the option to extend the term of the contract for three (3) additional one-year periods. Thereafter, this agreement will automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless either party gives prior notice of termination.

It is the intent of the City to award one contract for these services but will reserve the right to award to multiple bases on the responses received.

The successful Offeror will be awarded a contract on an exclusive basis. The City has the option to terminate the contract during the first six (6) months of the contract if the successful Offeror does not perform the contract to the City's satisfaction. Thereafter, either party may terminate the contract by giving the other party thirty (30) days prior written notice. Upon termination, the successful Offeror will have an additional thirty (30) days to collect the then outstanding cases. The successful Offeror may not assign the contract to any other party without the prior written consent of the City.

#### 6.2 GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Sample Agreement (ref. APPENDIX ONE) or, in the sole discretion of the CITY, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will redline attached Agreement (ref. APPENDIX ONE) and include redlined Agreement as part of its proposal in accordance with Section 3.8 of this RFP. Proposer's exceptions will be reviewed by the CITY and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then the CITY may consider Proposer's exceptions when the CITY evaluates the Proposer's proposal.

#### 6.3 RIGHT TO TERMINATE

The City of New Braunfels is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis; accordingly, the City reserves the right to terminate, without liability to the City, any contract (or renewal option) for which funding is not available. The City reserves the right to negotiate with any and all persons or firms.

**ATTACHMENT A**  
**COST PROPOSAL FORM**

Proposal of: \_\_\_\_\_ (Proposer Company Name)

**SUBMITTAL REQUIREMENTS:**

Provide the overall cost the City is required to secure Proposer's proposed Goods and/or Services. Contractor is required to supply pricing for any labor and materials necessary to support the requested scope of work.

Provide with this Attachment A, the Contractor Rate Schedule pricing.

- Provide your firms list of fees and total cost for the collection services that support the City's scope of work as described in section 4 of this proposal.
- Fee/rate schedule shall be included which will be valid for the term of the contract.
- The city is looking for a price per service and other additional alternative resources that your firm performs that support case resolution and the collection of outstanding fines, costs and fees.

**Failure to complete this form may result in your Proposal being deemed non-responsive and rejected without any further evaluation.**

**OFFER TO: CITY OF NEW BRAUNFELS:**

The Undersigned hereby offers and agrees to furnish the services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Proposal. Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the required pursuant to the above-referenced Request for Proposal upon the terms quoted (firm fixed percentage) below.

**ADDENDA:**

The undersigned hereby acknowledges receipt of the following addenda to the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

**OBLIGATION:**

The undersigned, by submission of this Offer, hereby agrees to be obligated, if the Offer is accepted by the City of New Braunfels, to enter into a Contract to provide the stated goods and/or services for the term as stated herein in accordance with the Scope of Work, Specifications, and Terms and Conditions, together with any written Addenda as specified above and any negotiated terms. If this offer is accepted and signed by the City of New Braunfels, this RFP document, together with any written Addenda and any negotiated terms shall be (collectively) the contract.

**NON-COLLUSION:**

The undersigned, by submission of this Proposal Form and other required forms, hereby declares that this Proposal is made without collusion with any other business making any other Proposal, or which otherwise would make a Proposal.

**ATTACHMENT A**  
**COST PROPOSAL FORM – SIGNATURE PAGE**

I certify, under penalty of perjury, that I have the legal authorization to bind the Respondent/firm hereunder:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Person Authorized to Sign

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

Email: \_\_\_\_\_

**ATTACHMENT B**

**COMPANY INFORMATION AND CERTIFICATIONS**

**1. Company Information:**

- Company name: \_\_\_\_\_
- Company address: \_\_\_\_\_
- Year established: \_\_\_\_\_
- Number of years in business under present name: \_\_\_\_\_
- Form of ownership:    ☐ Proprietorship    ☐ Partnership    ☐ Corporation    ☐ Other (specify)
- Federal Employer Identification Number: \_\_\_\_\_
- Texas Comptroller's Taxpayer Number, if applicable: \_\_\_\_\_
- DUNS NUMBER: \_\_\_\_\_

**2. Subcontractor(s), if applicable:**

- ☐ Subcontractor(s) will not be used to complete this contract.
- ☐ Subcontractor(s) will be used to complete this contract. (*Attach a list if additional space is necessary.*)

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

Percentage (%) of Total Contract: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**3. If awarded, Respondent's primary point of contact for City account is:**

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

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

Office Location: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\* Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

\*\* Emergency Contact Number for After-Hours Service: \_\_\_\_\_

**\* A representative of the company must be available to answer phone calls from City Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time).**

**4. If awarded, Respondent shall indicate preferred method for which City is to notify Awarded Contractor of purchase orders:**

Purchase Orders shall be communicated via: *(check all that apply)* \_\_\_ Phone \_\_\_ Fax \_\_\_ Email

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

**VENDOR CERTIFICATIONS**

**DEBARMENT/SUSPENSION INFORMATION:**

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity or is Respondent listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov?>
- ☐ 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, or listed at epls.gov and state the reason for or circumstances surrounding the debarment, suspension or ineligible for federal procurement, including but not limited to the period of time for such debarment, suspension or ineligibility.

**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 Proposal 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 Proposals 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 Proposal? ☐ **Yes** ☐ **No**
1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
  2. That your cost Proposal is genuine and is not a collusive or sham Cost Proposal;
  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 Proposal, 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 Proposal or in any other cost Proposal, 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 Proposal 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. GOVERNMENT CODE TITLE 10 SUBTITLE F VERIFICATIONS:**

- 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.
- B. Pursuant to Sections 2270.001, 2270.002, 808.001, 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.
- C. Pursuant to subtitle F, Chapter 2252, Texas Government code, contractor shall not do business with Iran, Sudan or a foreign terrorist organization while providing products or services to the City of New Braunfels. ☐ **Yes** ☐ **No**
- D. Pursuant to Section 2274 of the Texas Government Code and Texas Senate Bill 13 (2021), Contractor certifies that either (i) it does not boycott and will not boycott certain energy companies; and (2) will not boycott certain energy companies during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement. ☐ **Yes** ☐ **No**
- E. Pursuant to Section 2274 of the Texas Government Code and Texas Senate Bill 19 (2021), Contractor certifies that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association. ☐ **Yes** ☐ **No**

**ACKNOWLEDGEMENT**

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I certify that I have read all of the specifications and general RFP 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.

Bidder's full name and entity

\_\_\_\_\_  
**Company's Name**

\_\_\_\_\_  
**Signature, Authorized Representative of Respondent**

\_\_\_\_\_  
**Title**



## ATTACHMENT C

### EXCEPTIONS AND ALTERNATIVES FORM

**Failure to complete this form may result in your Proposal being deemed non-responsive and rejected without any further evaluation.**

Proposers are to comply with all requirements of this solicitation, otherwise the proposal may be deemed non-responsive. Exceptions may be considered if they are presented with the proposal and if the City determines that the exception does not materially alter the intent of this solicitation or that it exceeds the requirements of this solicitation.

☐ No Exceptions Taken

☐ Exceptions Taken – \*See attached (Include in Tab 9)

*\*Note that if any exceptions are taken, all required information must be submitted as an attachment*

---

In the event the Proposer takes exception to any language in this solicitation, they may set forth alternatives by presenting each exception separately by stating:

**a)** The specific item or clause for which an exception is requested (citing the page and item number).

**b)** The suggested change to the exception, inclusive of proposed new language if applicable.

**c)** An explanation as to how the proposed change would benefit the City and/or why the exception is necessary.

*Except as may be indicated above, Proposer is in complete agreement with this entire solicitation including any proposed terms, conditions and business arrangements described herein.*

---

(Authorized Signature)

Date

---

(Title)

## **APPENDIX ONE SAMPLE AGREEMENT MASTER SERVICES AGREEMENT**

THIS AGREEMENT is entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as “CITY”, and \_\_\_\_\_, hereinafter referred to as “CONTRACTOR”, together collectively referred to as “Parties”.

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

WHEREAS, the CONTRACTOR 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. DURATION**

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, \_\_\_\_\_ with the option to renew for \_\_\_\_\_ additional terms of \_\_\_\_\_ year(s) each unless terminated as provided for in this Agreement.

### **II. GENERAL**

CONTRACTOR 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 CONTRACTOR upon giving CONTRACTOR written notice. CONTRACTOR shall be bound to CITY by the terms, conditions and responsibilities toward the CITY for CONTRACTOR’S services set forth in this Agreement.

All component parts of the Agreement Documents are intended to be complementary. In order of precedence, the Agreement Documents consist of the following documents (“Agreement Documents”):

- a) All written Change Orders executed after the Effective Date of this Agreement by the CITY Purchasing Agent and CONTRACTOR;
- b) This Agreement, along with any Exhibits, as they may later be modified by Amendments;
- c) The Statement of Work executed under this Agreement by the CITY Purchasing Agent and Consultant.
- d) The solicitation
- e) Contractor’s proposal

Exclusion from Agreement Documents. No terms and conditions submitted by CONTRACTOR in connection with any proposal or proposed order will be considered part of the Agreement Documents unless expressly accepted in writing by the CITY Purchasing Agent. If accepted by the CITY, the proposed terms and conditions are limited in effect to the proposal with which they were submitted.

### **III. PAYMENT**

A. The parties agree that CONTRACTOR 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 in Exhibit “B” shall not be exceeded without written permission of the CITY.

### **IV. TIME FOR PERFORMANCE**

A. CONTRACTOR 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 CONTRACTOR.

B. In the event CONTRACTOR’S performance of this Agreement is delayed or interfered with by acts of the CITY or others, CONTRACTOR 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 CONTRACTOR, unless CONTRACTOR 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 CONTRACTOR 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. 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”, the CITY hereby agrees, to the extent allowed under Texas law, to protect, defend, indemnify and hold harmless the CONTRACTOR, 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 CONTRACTOR participates in such other work.

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

## **VI. TERMINATION**

A. CITY or the CONTRACTOR may suspend or terminate this Agreement for cause or without cause by giving 30 days written notice to the other party. In the event suspension or termination is without cause, payment to the CONTRACTOR, in accordance with the terms of this Agreement, will be made only for the services CITY determines were properly performed up to the date of suspension or termination of this Agreement. Such payment will be due upon delivery of all instruments of service to CITY.

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

## **VII. INSURANCE**

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

B. CONTRACTOR shall provide and maintain in full force and effect for the duration 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 CONTRACTOR and CITY as an additional Insured with limits not less than \$1,000,000 for Bodily Injury/Property Damage (Combined Single Limit, Each Incident) and \$5,000 for Personal Injury Protection (PIP).

C. CONTRACTOR shall provide general Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The general Liability Insurance must name the CITY as an additional Insured.

D. 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 Agreement.

## **VIII. INDEMNIFICATION FOR INJURY AND PERFORMANCE**

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

B. The CONTRACTOR hereby agrees to the extent allowed by law to protect, indemnify and hold harmless the CITY, its 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, and any claimed defect in CONTRACTOR's performance, arising from any negligent act, error, or omission of the CONTRACTOR, its officers, employees, servants, agents or subcontractors, or anyone else under the CONTRACTOR'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 CONTRACTOR shall be obligated to the extent allowed by law 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. Acceptance and approval of the final plans by the CITY shall not constitute nor be deemed a release of this responsibility and liability of CONTRACTOR, 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 CONTRACTOR, its employees, contractor, agents and consultants.

D. CONTRACTOR shall defend and indemnify Indemnitees against and hold CITY 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 CONTRACTOR in performing this Agreement.

#### **IX. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

CONTRACTOR agrees that it is an independent contractor and not an agent of the CITY, and that CONTRACTOR is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONTRACTOR'S employees as employees of CITY for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. CONTRACTOR 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 CONTRACTOR.

#### **X. GENERAL INDEMNITY**

**A. IF THE PARTIES ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.**

**B. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO INDEMNIFY THE OTHER FOR THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER.**

#### **XI. INTELLECTUAL PROPERTY INDEMNITY**

**A. CONTRACTOR SHALL, AT ITS OWN EXPENSE, DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY, CITY AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BASED UPON ANY CLAIM THAT THE SERVICES, OR ANY PART THEREOF, OR THE PROCESS PERFORMED THEREBY CONSTITUTES AN INFRINGEMENT OF EITHER ANY PATENT OR COPYRIGHT OF THE UNITED STATES OR OF ANY TRADEMARK OR TRADE SECRET PROTECTED BY EITHER FEDERAL OR STATE LAW. CONTRACTOR SHALL PAY ALL AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING AND SHALL**

INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY AGAINST ALL LOSSES, EXPENSES, INCLUDING ATTORNEYS' FEES, AND DAMAGES RESULTING FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING OBEDIENCE TO RESULTING DECREES AND TO RESULTING COMPROMISES.

B. IF, IN ANY SUCH SUIT OR PROCEEDING, A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED, CONTRACTOR SHALL MAKE EVERY EFFORT, BY GIVING A SATISFACTORY BOND OR OTHERWISE, TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF, IN ANY SUCH SUIT OR PROCEEDING, THE SERVICES OR ANY PART THEREOF OR THE PROCESS PERFORMED THEREBY IS HELD TO CONSTITUTE AN INFRINGEMENT AND ITS USE BE PERMANENTLY ENJOINED, CONTRACTOR SHALL AT ONCE MAKE EVERY EFFORT TO SECURE FOR CITY A LICENSE AT CONTRACTOR'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF CONTRACTOR IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, CONTRACTOR SHALL, AT ITS OWN EXPENSE AND WITHOUT IMPAIRING PERFORMANCE REQUIREMENTS, EITHER PROVIDE NON-INFRINGING REPLACEMENTS OR MODIFY THE SERVICES TO ELIMINATE THE INFRINGEMENT. IN ADDITION TO INDEMNIFYING AND SAVING CITY HARMLESS, CONTRACTOR SHALL REIMBURSE CITY FOR ANY COSTS INCURRED AS A RESULT OF THE UNAVAILABILITY OF THE INFRINGING ITEM OR ITS NON-INFRINGING REPLACEMENT.

C. THE FOREGOING INDEMNITY PROVISIONS SHALL BE DEEMED INDEPENDENT COVENANTS AND SHALL SURVIVE COMPLETION OR TERMINATION OF THE AGREEMENT OR ANY CLAIMED BREACH THEREOF.

## **XII. ASSIGNMENT**

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

## **XIII. APPLICABLE LAWS**

In the performance of this Agreement, CONTRACTOR shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes, including the Americans with Disabilities Act.

## **XIV. AGREEMENT AMENDMENTS AND ADJUSTMENTS IN SERVICES**

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 as agreed in writing by both parties, except as may be otherwise provided therein.

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

## **XV. NOTICES AND AUTHORITY**

A. The CONTRACTOR agrees to send all notices required under this Agreement to the City Manager of the City of New Braunfels, or the City Manager's designee, at 550 Landa Street, New Braunfels, Texas 78130. The CONTRACTOR 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 CONTRACTOR at:

NAME:  
TITLE:  
ADDRESS:

## **XVI. INVOICING**

1. Invoices shall be directed to [ACCOUNTING@NEWBRAUNFELS.GOV](mailto:ACCOUNTING@NEWBRAUNFELS.GOV) and shall include:
  - a. Purchase order number prominently displayed on each invoice.
  - b. Unique invoice number
  - c. Invoice period
  - d. Invoice or billing date
  - e. Timesheets for services performed on a time and materials basis
  - f. Receipts for all materials used for services performed on a time and materials basis
  - g. Itemization of all deliverables completed and delivered to the CITY
  - h. Records supporting all reimbursable expenses, including without limitation for lodging, meals, mileage, airfare and car rentals
2. Payments may be based on completion of the services, fulfillment of milestones, or delivery of deliverables as agreed in the order. CONTRACTOR shall invoice CITY once a month for orders in progress that have activity for that month. Final payment by CITY shall not waive any rights and remedies that CITY has and shall not release CONTRACTOR from any duties and obligations set forth in the Agreement Documents.
3. No invoice shall be considered complete or payable unless all documentation is submitted with invoice supporting reimbursable and CITY approved expenses, such as time sheets, transportation, lodging and meal expenses.
4. Invoices shall be supported by billing information, tie to a specific order and shall detail amount spent/remaining. Direct expenses shall include supporting detail showing the nature and extent of the expenses and shall reference the appropriate deliverable, milestone payment, and order line detail. Labor charges shall detail the name and category of the person providing services and shall show the hours worked by each category/name, the associated rate, and the extended total for the invoice. Supporting documentation shall also be submitted for sub-contractor work invoiced.
5. Payment terms are Net 30 Days.

## **XVII. TRAVEL PROCEDURES**

Qualifying expenses are automobile rental, fuel, lodging, meals, airline tickets, taxi cabs, parking, and mileage. Travel that does not follow the policy outlined herein shall not be payable without prior written consent by the CITY:

1. Travel Per Diem shall equal the U.S. General Services Administration domestic federal per diem rates ("Per Diem") for the applicable primary destination for the year in which travel shall occur, which can be located here: <https://www.gsa.gov/travel/plan-book/per-diem-rates>
  - a. Should the primary destination not be referenced in the Per Diem, the per diem amount shall be

- b. no greater than \$124.
  - c. Meals shall not exceed a total of \$59 per day.
- 2. Mileage shall be based on the IRS standard mileage rate (currently located at <https://www.irs.gov/taxCONTRACTORS/standard-mileage-rates>)
- 3. Airline tickets shall be booked fourteen (14) days in advance. Only economy class tickets shall be booked.
- 4. CONTRACTOR shall use its corporate rate for hotels, when available or book hotels through a discount travel service.
- 5. Entertainment and alcoholic beverages are not reimbursable.

### **XVIII INTERLOCAL COOPERATIVE CONTRACTING**

It is understood and agreed by CONTRACTOR and CITY that any governmental entity having entered into an interlocal agreement with CITY may purchase the services specified herein in accordance with the prices, terms, and conditions of this agreement. It is also understood and agreed that each local entity will establish its own contract with CONTRACTOR, be invoiced therefrom and make its own payments to CONTRACTOR in accordance with the terms of the contract established between the new governmental entity and CONTRACTOR. It is also hereby mutually understood and agreed that CITY is not a legally bound party to any contractual agreement made between CONTRACTOR and any entity other than CITY.

### **XIX. REVIEW AND ACCEPTANCE**

A. Review and acceptance requirements may be specified in an Order. Review and acceptance of all performance, reports or other Deliverables under this Article shall be performed at the place of delivery specified in the individual Order.

B. When CONTRACTOR can demonstrate that the Services are complete in accordance with the acceptance criteria included in the Order and so notifies CITY, CITY shall review the Services for general compliance with the Agreement. If the CITY determines that Services comply with the Agreement requirements, and CONTRACTOR has furnished any required Deliverables, then CITY shall notify CONTRACTOR in writing of CITY's acceptance of the Services ("Acceptance"). If CITY determines the Services to be deficient, CITY shall notify the CONTRACTOR accordingly. The CONTRACTOR shall, without delay, correct any deficiency without additional compensation. When the CONTRACTOR can demonstrate that the deficiency has been corrected, the CONTRACTOR shall notify CITY for review of said correction. Upon CITY finding that the correction appears to comply with the requirements and no deficiency remains with the Services, CITY shall notify the CONTRACTOR in writing of acceptance of the Services. Acceptance shall not limit nor diminish CONTRACTOR's warranties and other obligations under the Agreement.

### **XX. REMEDIES**

A. CONTRACTOR shall be liable for any actual damages incurred by CITY arising out of CONTRACTOR's failure to perform on time.

B. In the event of a breach of contract by CONTRACTOR, CITY shall have the right to any remedy at law or in equity including the remedies of a temporary and permanent injunction and specific performance. All remedies shall be cumulative. In any action to enforce any portion of this Agreement or related Order the prevailing party shall be entitled to its reasonable attorney's fees and costs as authorized under Texas law. CITY shall have the right to set off any amounts owed it by CONTRACTOR and deduct



those sums from amounts which CITY may owe CONTRACTOR.

C. Back Charges. CITY may impose back charges against CONTRACTOR or deduct back charges from moneys owed CONTRACTOR for performance or re-performance by CITY or third parties of the Services.

## **XXI. FORCE MAJEURE**

A. The nonperformance or delayed performance by CONTRACTOR or CITY of any obligation under the Agreement shall be excused if such nonperformance or delay is caused by an event beyond the control of the affected Party ("Force Majeure"), except to the extent that CONTRACTOR knew of, or should reasonably have been able to foresee such an event and failed to take measures to avoid the event, or adequately take reasonable measures that would allow CONTRACTOR to perform despite the occurrence of the event. Items beyond the control of the Parties include, but are not limited to: acts of war, acts of a public enemy, acts of domestic or foreign terrorism, natural disasters, strikes, epidemics or quarantine restrictions, riot, or sabotage and acts of civil or military authority having jurisdiction. Except for extreme weather events including without limitation named or numbered storms or tornados, weather shall not be considered a Force Majeure event unless so stated in an Order.

B. Upon occurrence of a Force Majeure event, the affected party shall notify the other party, in writing, of the reason for such delay, the estimated amount of the delay and the steps which can be taken to minimize the delay. No Force Majeure event shall exist until such writing is received by the unaffected party. Once a Force Majeure event occurs the date for performance of the Services shall be extended for a period equal to the time lost by reason of the delay, provided CONTRACTOR or CITY has taken steps to proceed with the performance of the Agreement and has made written notification of such delay and of any Corrective Action taken. CONTRACTOR shall not be entitled to any increase in compensation by reason of Force Majeure.

C. The following delays shall not be deemed Force Majeure or constitute excusable delays in performance by CONTRACTOR. The following shall not constitute a reason for extending the date for performance of the Services:

- 1) Delays by subcontractors or by CONTRACTOR for reasons other than Force Majeure;
- 2) Delays in approval of documentation because of inadequate performance or unrealistic approval schedules;
- 3) Delays caused by CONTRACTOR's lack of sufficient personnel with the necessary skills; or
- 4) Delays caused by Services in hazardous environments.

## **XXII. TERMINATION FOR CONVENIENCE**

A. CITY shall have the right to terminate this Agreement and any Order placed under it for its convenience at any time. After receipt of the notice of termination, the CONTRACTOR shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Agreement:

- 1) Stop all ongoing Services;
- 2) Place no further subcontracts or orders for materials or Services;
- 3) Terminate all subcontracts;
- 4) Cancel all Orders, as applicable; and
- 5) Take any action that is necessary to protect and preserve all property related to this

Agreement that is in the possession of the CONTRACTOR.

B. Upon termination for convenience, CONTRACTOR will comply with instructions in the notice of termination regarding delivery to CITY of all Deliverables in progress and all completed Deliverables.

C. In the event of a termination under paragraph (a) of this Article, CITY shall pay for portions of Services completed and accepted by CITY and materials purchased. CITY shall not be liable in connection with any termination under this Article for indirect, special, incidental, consequential or punitive damages, including without limitation loss of anticipated future Services, anticipated profits, administrative costs or overhead on anticipated Services. Final payment shall be made upon the Parties' agreement of the amount of the final invoice and CITY's Acceptance of the Services.

### **XXIII. TERMINATION FOR CAUSE**

A. The occurrence of any one or more of the following events will constitute an event of default:

- 1) CONTRACTOR's persistent failure to perform the Services in accordance with the Agreement Documents (including, but not limited to, failure to supply sufficiently skilled workers, suitable materials or equipment, or to adhere to project schedules as adjusted from time to time by the Parties);
- 2) CONTRACTOR's disregard of applicable laws or regulations;
- 3) CONTRACTOR's disregard of the authority of the CITY's Agent;
- 4) CONTRACTOR's violation in any material way of any provisions of this Agreement and the Agreement Documents;
- 5) Failure of CONTRACTOR to pay subcontractors and/or material suppliers;
- 6) CONTRACTOR's violation of CITY's ethics policy or the Ethics Requirements contained herein; or
- 7) CITY designates a Key Person, and that Key Person is no longer employed by CONTRACTOR.

B. If one or more of the events identified in paragraph (a) occur, the CITY may, at its sole discretion, choose to either terminate this Agreement at the time of CITY's choosing upon written notification to the CONTRACTOR, or provide a Corrective Action Request to CONTRACTOR.

C. If CONTRACTOR fails to initiate such Corrective Action or submit an acceptable plan within the aforementioned timeframe, or fails to follow through on completion of the plan, CITY may take any or all of the following actions without affecting the contracted price or schedule:

- 1) CITY personnel may direct PROFESSIONAL to cease performance on all or part of the Agreement until satisfactory Corrective Action has been taken;
- 2) CITY may have others take Corrective Action necessary to achieve compliance with the Agreement. CITY may deduct the cost of such Corrective Action by others from any moneys due to CONTRACTOR. Corrective Action by others shall be taken when, in the judgment of CITY, the noncompliance threatens safety, unreasonably interferes with or delays the work of others, or otherwise creates a situation the resolution of which cannot be delayed without adversely impacting quality, cost or timely completion;
- 3) CITY may seek any of the Remedies set forth further in this Agreement; and/or
- 4) CITY may Terminate for Cause as provided herein.

D. If this Agreement has been so terminated by CITY, the termination will not affect any rights or remedies of CITY against CONTRACTOR or any surety then-existing or which may thereafter accrue. No

retention or payment of moneys due CONTRACTOR by CITY will release CONTRACTOR from liability.

E. If it is ever determined that CITY wrongfully terminated CONTRACTOR for Cause, the termination shall be converted to a termination for convenience.

#### **XXIV. SUSPENSION**

A. CITY may, at any time and at its sole option, suspend all or any portions of the CONTRACTOR's performance under this Agreement by providing ten (10) calendar days written notice to the CONTRACTOR. Upon receipt of any such notice, CONTRACTOR shall:

- 1) Immediately discontinue performance under this Agreement on the date and to the extent specified in the notice;
- 2) Place no further orders with subcontractors or CONTRACTOR with respect to the suspended portion of the performance, other than to the extent necessary to protect any portion of the performance already completed;
- 3) Promptly make every reasonable effort to obtain suspension, upon terms satisfactory to CITY, of all orders, subcontracts and rental agreements to the extent that they relate to performance suspended by the notice;
- 4) Continue to protect and maintain the portion of the performance already completed, unless otherwise specifically stated in the notice; and
- 5) Continue to perform CONTRACTOR's obligations for the portions of the Agreement not suspended.

B. CITY shall reimburse CONTRACTOR for the cost of maintaining and protecting any portion of CONTRACTOR's performance that has not been delivered to CITY, subject to approval by CITY.

C. Upon receipt of notice to restart the suspended portion of the performance, CONTRACTOR shall immediately resume the suspended performance to the extent required in the notice. Within fourteen (14) calendar days after receipt of notice to restart the performance, the CONTRACTOR shall submit a revised schedule for approval by CITY. If, as a result of any suspension, the cost to CONTRACTOR of subsequent performance or the time required to do so is changed, a claim for an adjustment in the contracted price may be made. Any claim on the part of CONTRACTOR for change in price or extension of time shall be made in accordance with this Agreement.

D. If amounts set forth in (b) above cannot be negotiated then CITY may terminate this Agreement with no further liability to CONTRACTOR.

#### **XXV. Dispute Resolution**

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach hereof, must be referred to upper management of the parties for good faith discussion and resolution prior to invoking any other dispute resolution method authorized under this Agreement. Pending resolution of any such dispute, CONTRACTOR must continue to perform its obligations under this Agreement and CITY must continue to make payment to CONTRACTOR for any undisputed items. The Parties agree that in the event of a dispute concerning the performance or non-performance of any obligations flowing from or as a result of this Agreement and prior to the initiation of any litigation, the Parties will voluntarily submit the dispute to mediation before a mediator selected by the Parties as though it were referred through the operation of the Texas Alternative Dispute Resolution Procedures Act, Title 7, Chapter 154, Texas Civil Practices & Remedies Code. No record, evidence, statement or declaration resulting from or in connection with such alternate dispute

resolution procedure may be used in evidence in subsequent litigation except to demonstrate that this Article has been complied with in good faith by a Party. CONTRACTOR shall proceed diligently with performance of the Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement. During a dispute, CITY has right to use any deliverables, work product, material or equipment provided by CONTRACTOR under this Agreement until the dispute is settled through a predefined court process.

#### **XXVI. GOVERNING LAW**

A. This Agreement shall be governed, interpreted and enforced under the laws of the State of Texas, without regard to its conflict of law principles. In the event of litigation between the Parties arising out of or related to this Agreement, venue for such litigation shall be in a court of competent jurisdiction in Comal County, Texas.

B. CONTRACTOR shall be aware of and shall comply with all federal, state and local laws, ordinances, codes (including applicable CONTRACTOR codes) and regulations applicable to performance of this Agreement, including standards and codes of technical societies that have been adopted by law or regulation or compliance with which is required in the Agreement Documents. If any of the work fails to comply with such laws, ordinances, codes and regulations, CONTRACTOR shall bear any expense arising from that failure, including the costs to bring the work into compliance.

C. Without limiting the generality of the foregoing, during the performance of the Agreement, CONTRACTOR agrees to comply with all applicable regulations of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor as they may apply to Equal Employment Opportunity. CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor pursuant thereto, and will permit access to its books, records and accounts by the cognizant agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

#### **XXVII. INDEPENDENT CONTRACTOR**

A. CONTRACTOR shall perform in all respects under this Agreement as an independent contractor and not as an employee, partner, joint venturer or agent of the CITY. CONTRACTOR's performance shall be subject to the CITY's review, approval and acceptance as provided in the Agreement Documents, but the detailed manner and method of performance shall be under the control of CONTRACTOR. However, because CONTRACTOR's performance may be associated in the minds of the public with CITY, CONTRACTOR shall ensure that all work by its employees, subcontractors and agents are performed in an orderly, responsible and courteous manner. **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS CITY FROM ANY DAMAGE, JUDGMENT, LOSS, FINE, PENALTY OR INTEREST AWARDED TO CONTRACTOR PERSONNEL OR ANY TAXING AUTHORITY BASED UPON A CLAIM THAT CONTRACTOR PERSONNEL ARE EMPLOYEES OF CITY.**

B. Upon prior notification to and written approval of CITY, CONTRACTOR may hire subcontractors to perform work hereunder. CONTRACTOR shall be responsible to CITY for the performance of all such subcontractors. The CITY reserves the right, in its sole discretion, to reject the employment by CONTRACTOR of any subcontractor to which CITY has an objection. CONTRACTOR, however, shall not be required to contract with any subcontractor to which it has an objection. CITY shall require any and all such subcontractors to sign contracts with CONTRACTOR that bind the subcontractors to perform their subcontracts in accordance with the applicable requirements of the Agreement Documents. Upon the request of CITY, CONTRACTOR shall furnish CITY with copies of such subcontracts. In addition, CONTRACTOR

agrees that it is CONTRACTOR's responsibility to ensure that such subcontractors make all appropriate tax payments or tax withholding in relation to subcontractor's employees providing work to CITY through CONTRACTOR under this Agreement. CONTRACTOR represents that it and its subcontractors have skills necessary to perform the work contemplated in this Agreement and any related Orders and are fully trained to perform the tasks required by this Agreement and that they need no training by the CITY.

### **XXVIII. ON-SITE ACTIVITIES**

A. This Article shall only apply if CONTRACTOR has any personnel performing Ancillary Services at a CITY Site, under this Agreement.

B. CONTRACTOR shall have an authorized representative at the Site to whom CITY SME or representative may give instructions at all times when Ancillary Services are being performed. The authorized representative of CONTRACTOR shall be identified to CITY in writing.

C. CONTRACTOR shall have competent supervision at the Site at all times to direct and observe the Ancillary Services to be performed. CONTRACTOR will investigate and take appropriate action with respect to any personnel problems brought to its attention by CITY's Agent.

D. CONTRACTOR shall confine all of its operations and personnel to those areas of the Site to which CITY authorizes access.

E. CONTRACTOR's personnel may not operate CITY's tools, vehicles, materials or equipment (collectively "CITY Equipment") without CITY Agent's prior authorization. If CONTRACTOR borrows CITY Equipment, it is conclusively presumed CONTRACTOR agrees to the following terms and conditions, regardless as to whether such authorization is granted by CITY:

- 1) The CITY Equipment is provided AS IS, with no representations or warranties;
- 2) CONTRACTOR assumes full responsibility for the protection of the CITY Equipment;
- 3) CONTRACTOR agrees to return the CITY Equipment to CITY in the same condition as when it was borrowed, or, if repairs are necessary, to cause such repairs to be performed promptly at CONTRACTOR's sole expense before the CITY Equipment is returned to CITY. CITY may deduct or offset any costs associated with repairing any damage to the CITY Equipment from any payment owed to the CONTRACTOR hereunder;
- 4) CONTRACTOR releases and discharges CITY, its directors, officers, and employees from all liability for any loss or damage arising from, related to, or resulting from any use of the CITY Equipment by any individuals, other than CITY employees; and
- 5) CONTRACTOR agrees to defend, indemnify and hold harmless CITY, its directors, officers, and employees from and against any and all claims, demands, suits, causes of action, proceedings, judgments, damages, costs, expenses, and liabilities (including reasonable attorneys fees and costs) arising out, related to, or resulting from any use of the CITY Equipment by any individuals, other than CITY employees.

**CONTRACTOR SHALL PROVIDE ALL TOOLS AND EQUIPMENT ASSOCIATED WITH WORKER SAFETY AND HEALTH, NEEDED TO PERFORM THE WORK, INCLUDING WITHOUT LIMITATION AIR MONITORING EQUIPMENT, CONFINED SPACE EQUIPMENT, PERSONAL PROTECTIVE EQUIPMENT, WARNINGS, BARRICADES AND LOCK OUT/TAG OUT EQUIPMENT.** CONTRACTOR shall cooperate with CITY and others working at or near the Site. CITY has no obligation to lend CITY Equipment to CONTRACTOR and may decline to do so at any time in its sole discretion.

F. CONTRACTOR shall promptly report to CITY's Agent any defects in the work of others which impacts on CONTRACTOR's Ancillary Services or the performance of its obligations hereunder. Failure to report such defects constitutes acceptance of the conditions by CONTRACTOR.

G. CONTRACTOR shall keep all of its work areas free from trash and debris and keep its work areas "broom clean" on a continuous basis.

H. CONTRACTOR shall secure and protect its own materials, tools, equipment and Ancillary Services, including any CITY Equipment, whether provided by CITY under this Agreement or borrowed from CITY.

### **XXIX. RIGHT TO AUDIT**

CITY shall have the right to audit all books and records (including the supporting or underlying documents and materials), in whatever form they may be kept, whether written, electronic or other, relating or pertaining to this Agreement (Collectively "Records"), kept by or subject to the control of the CONTRACTOR, including, but not limited to those kept by the CONTRACTOR, its employees, agents, assigns, successors and subcontractors. The CONTRACTOR shall maintain, and shall require its subcontractors to maintain, such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least two (2) years following the completion of the last Order completed under this Agreement, including any and all extensions thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to CITY during normal business hours at the CONTRACTOR's office or place of business. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location which is convenient for CITY. This right to audit applies to all books, records and supporting documents and materials regardless of the format in which those items are maintained. In the event that the CONTRACTOR fails the audit, CITY shall be compensated by CONTRACTOR as appropriate and as demonstrated by the audit findings. Specifically, in the case that the audit finds that CONTRACTOR over-charged CITY, CONTRACTOR shall compensate CITY by the amount of the overcharge plus a late charge of 1% per month beginning with the month in which the overcharge occurred to the month in which the overcharge is compensated by the CONTRACTOR.

### **XXX. FINANCIAL OBLIGATIONS**

A. CONTRACTOR hereby certifies that it has the financial ability to perform this Agreement and all the Orders executed hereunder to final completion and that it shall notify CITY if it appears that: CONTRACTOR ceases to have the financial ability to perform this Agreement or any Order hereunder, if the CONTRACTOR's liabilities exceed its assets, or if it is generally unable to pay its debts. Upon notice thereof, CITY reserves the right to require a letter or credit or other financial guarantee acceptable to CITY.

CONTRACTOR shall, at its own expense, prepare and submit for review annually by CITY audited financial statements. Such statements shall be submitted to CITY no later than May 1 of each year. If CITY, in its sole judgment, concludes that CONTRACTOR's financial statements indicate that CONTRACTOR poses an unwarranted risk to CITY, then CITY may terminate this Agreement for its own convenience.

### **XXI. BANKRUPTCY**

Subject to the rights of any trustee in bankruptcy and to applicable law, in the event that either Party becomes or is declared insolvent or bankrupt, is the subject of any proceedings related to its liquidation, insolvency or for the

appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, such Party agrees to furnish notification to the other within five working days by registered mail. Then the other Party may, by giving written notice thereof to the other Party, terminate this Agreement as of a date specified in such notice of termination.

#### **XXXII. PUBLICITY**

CONTRACTOR shall not directly or indirectly publish, approve or issue any advertising, sales promotion, press release or public statement relating to this Agreement or any other work performed by CONTRACTOR for CITY wherein CITY's name, trade name, trademark and/or logo is expressly mentioned or language is used from which CITY's identity may, in CITY's responsible judgment, be inferred or implied (a "Prohibited Publication"), without the prior written approval of the CITY Purchasing Agent, which approval may be withheld in CITY's absolute discretion.

#### **XXXIII. AGREEMENT NON-EXCLUSIVE**

The Agreement is not exclusive. CITY has the right to hire others to provide the same or similar work.

#### **XXXIV. SEVERABILITY**

If any term or provision of this Agreement is held illegal or unenforceable by a court of competent jurisdiction, all other terms in this Agreement will remain in full force and effect and the illegal or unenforceable provision shall be deemed stricken. In the event the stricken provision materially affects the rights, obligations or duties of either party, CITY and CONTRACTOR shall substitute a provision by mutual agreement that preserves the original intent of the parties as closely as possible under applicable law.

#### **XXXV. INTERPRETATION AND RELIANCE**

While this Agreement was initiated by CITY, CONTRACTOR had the opportunity to take exception to and seek clarification of it. Thus, this Agreement is the product of negotiations between the Parties. No presumption will apply in favor of any Party in the interpretation of this Agreement or in resolution of any ambiguity of any provision.

#### **XXXVI. SURVIVAL**

Termination or expiration of this Agreement shall not relieve, reduce, or impair any rights or obligations of a party which expressly or by implication survive termination or expiration of this Agreement. Without limiting the generality of the foregoing, the following Articles shall survive the termination or expiration of this Agreement: General, Services, Documents, Termination, Insurance, Indemnification for Injury and Performance, Indemnification for Unemployment Compensation, General Indemnity, Intellectual Property Indemnity, Default of CONTRACTOR, Notices & Authority, Invoicing, Remedies, Termination for Convenience, Termination for Cause, Dispute Resolution, Governing Law, Independent Contractor, Right to Audit, Publicity, Agreement Non-Exclusive and Severability.

#### **XXXVII. BUSINESS REVIEWS**

CITY and CONTRACTOR shall conduct business reviews at least annually. CONTRACTOR shall attend business reviews at CONTRACTOR's own expense. These business reviews may be held formally or informally at the discretion of CITY. As part of the business review process, the CONTRACTOR shall be evaluated on ability to perform, quality, service, value, and innovation. CONTRACTOR shall be required to

submit updated qualifications to the CITY Agent upon request.

As part of the Business Review process, CONTRACTOR shall provide to CITY proposals for cost reduction opportunities on open Orders or opportunities available overall.

**XXXVIII. MISCELLANEOUS**

The CONTRACTOR shall prepare and execute in any form and detail as CITY shall direct all estimates, certificates, reports, and other documents required to be executed by the CONTRACTOR pursuant to any Order or this Agreement, including, without limitations, a monthly report of progress on the form of schedule referred to within this Agreement or any subsequent Order showing the percentage of completion of each of the Deliverables thereof. Reporting for Time and Materials based Orders shall include costs incurred and matched to its respective SOW Deliverable. Reporting shall also include this cost incurred against the forecasted total cost and indicate any potential schedule or cost impacts. Reporting shall include spend to date. Any representations or recommendations on the part of the CONTRACTOR made subject to this Article shall not constitute a change to the Order.

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

**CONTRACTOR**  
XX

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

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

TITLE: CITY MANAGER

TITLE: title

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ADDRESS:  
550 Landa Street  
New Braunfels, TX 78130

ADDRESS:  
XX  
XX



**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B**  
**PAYMENT SCHEDULE**