

CITY OF NEW BRAUNFELS



REQUEST FOR QUALIFICATIONS

On-Call Professional Services Solicitation # RFQ 24-023

Date Issued: June 14, 2024

RESPONSES MUST BE RECEIVED NO LATER THAN:
July 25, 2024

New Braunfels Purchasing Department Contact:
Greg Gutierrez
830-221-4398
GGutierrez@NewBraunfels.gov



SOLICITATION AND OFFER

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

Solicitation Number: 24-023 "On-Call Professional Services"	<input type="checkbox"/> Invitation for Bid (IFB) <input checked="" type="checkbox"/> Request for Qualifications (RFQ)	Date Issued: June 14, 2024
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SOLICITATION

-Respondents must submit sealed Statement of Qualifications (SOQ) containing one (1) signed original hardcopy and one (1) in electronic format (USB). Electronic Bid submissions do not require original hardcopy and USB to be submitted.

-Questions concerning RFQ must be received, by email only, prior to **5:00P.M. CT on July 9, 2024**.

SOQs will be received at the Office of the City Secretary at the address shown above until: **3:00 P.M. (CT), July 25, 2024**.

There will not be a public opening. SOQs 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)	Greg Gutierrez , Buyer Phone: (830) 221-4398 Fax: (830) 608-2112
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5% Proposal Bond Required: YES NO

100% Payment Bond Required: YES NO

100% Performance Bond Required: YES NO

OFFER

(This portion must be fully completed by Proposer.)

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

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

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.

SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT. SIGNATURE SHOULD ALSO BE REFLECTED ON USB COPY.

Name and Address of Respondent:	Name and Title of Person Authorized to Sign Offer: E-Mail Address: Phone Number: Fax Number:
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Signature:	Date:
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Name, Address and Telephone Number of Person authorized to conduct negotiations on behalf of Respondent. (Applies to Request for Qualifications only)	
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SECTION 3

INSTRUCTIONS FOR RESPONSE

3.1 PURPOSE

This Request for Qualifications (RFQ) is issued by the City of New Braunfels, (hereinafter referred to as the "City"). The City is seeking Statements of Qualifications from qualified firms interested in providing on-call list of prequalified Architects, Engineers, Consultants and other Special Services. This is an Indefinite Delivery Indefinite Quantity (IDIQ) solicitation for services.

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
June 14, 2024	RFQ issued issued on https://www.bidnetdirect.com/texas/city-of-new-braunfels and https://www.nbtexas.org/2694/Active-Solicitations
July 9, 2024	Deadline to receive questions shall be 5:00 p.m.
July 25, 2024	Statement of Qualifications submission deadline
TBD 2024	City Council considers Contract Awards for Master Service Agreements

3.4. SUBMISSION INSTRUCTIONS:

(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:**
"RFQ 24-023 On-Call Professional Services"

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.

3.5 RESPONSE CONTENT

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.**

THE FOLLOWING ITEMS MUST BE INCLUDED IN YOUR STATEMENT OF QUALIFICATIONS IN THE FOLLOWING ORDER.

Respondents shall limit Responses to minimum of a 10 font and follow the page limitations indicated in each Tabs instructions.

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. Failure to include a signed copy of the Solicitation Offer and all addenda issued (if applicable) will result in the removal of the SOQ from consideration.

Acknowledgment of Addenda, if applicable.

TAB 2: Company Relevant Background and Experience: Limited to 2 pages and minimum of 10-pt font.

- Include your firm's name; address, email, and telephone number of the contact person; and the date of the response.
- Description of the Company's history and overall Company qualifications and experience
- Highlight your firm's experience with New Braunfels issues, as may be evidenced by work in New Braunfels and/or the surrounding area during the past five (5) years.
- **Include your Organizational Chart**

TAB 3: Category's applying for: *Limited to 4 pages and minimum of 10-pt font.*

- Category Form – Attachment A – check the categories your firm is applying for.
- Category Qualifications:
 - For each category you are applying for you are limited to 4 pages. Each side is counted as a page. (A two-sided page counts as two pages.)

- This section should include a support of the Respondent's experience that the City of New Braunfels can use as a basis for performance evaluation. This section should include:

Qualifications and Experience

- Experience in providing similar services for the City of New Braunfels and other similar agencies, and success in performing this service.
- Sample projects may be included

Personnel

- Proposed personnel including relevant experience and background. Include resumes for category specific personnel only.

TAB 4: Other Support and Attachments

- Vendor Certifications – Attachment 1
- Conflict of Interest Form (per Section 7.15)
- Certificate of Interested Parties – Form 1295 (per Section 7.16)

TAB 5: Deviations from RFQ:

Reference Attachment C – Exceptions and Alternatives Form. Respondent is to indicate any deviations being offered in lieu of specified language referenced in the solicitation.

3.6 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
GGutierrez@newbraunfels.gov.

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

Questions – RFP 24-023 On-Call Professional Services

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.

3.7 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.

3.8 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.

3.9 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.

3.10 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.

3.11 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.

3.12 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

3.13 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.

3.14 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.

3.15 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 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

If applicable, the completed Conflict of Interest Questionnaire (Form CIQ) shall be included with their response.

3.16 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

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

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm 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

4.1. PROJECT DESCRIPTION

It is the intent of this Request for Qualifications (RFQ) to build a shortlist of highly qualified, capable, and experienced professional services firms to provide professional services for City projects. Multiple consultants will be chosen as prequalified vendors. Various City departments will utilize the services provided.

Firms may apply in any and all categories but must clearly state in their letter of interest which categories they wish to be considered. The successful firm(s) may be awarded a multi-discipline contract.

The effective period of this contract shall be three years from the date of award, with the option to renew for two (2) additional one-year periods upon mutual consent by the successful firms and the City of New Braunfels.

- During the term of the contract, the City may have the option to periodically reopen this RFQ for the purpose of providing opportunities to firms to become qualified professional service providers for the City.

4.2. SCOPE OF WORK

The City of New Braunfels intends to award multiple contracts for multiple disciplines that will support various professional services that are a mix of capital and operations projects for the city. Some possible projects may include planning, engineering, design, mobility enhancements, development services, and project/construction management.

Definition and types of Professional Services - Guided by Government Code Chapter 2254
(Professional Services Procurement Act)

Architect, Engineer or Land Surveyor

- ❖ Architecture (Texas Architecture Practice Act)
- ❖ Professional Engineering (Texas Professional Engineering Practice Act)
- ❖ Land Surveyor
- ❖ Landscape Architecture
- ❖ Real Estate Appraising
- ❖ *Accounting – Not included in this solicitation*
- ❖ *Medicine – Not included in this solicitation*
- ❖ *Optometry – Not included in this solicitation*
- ❖ *Professional Nursing – Not included in this solicitation*

“Other” Special Services / Consulting Services - those not specifically listed in GC 2254 - are defined as services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

The City has developed two processes for selecting an on-call professional.

- On-Call List – a pooled list of prequalified professionals by category. Staff will follow the City’s Task Order Process for selection of its professionals. One or more professionals may be placed on the “on-call list.”

- Task Order Process – Staff will create a Task Order Request for the proposed work assignment. The Task Order will be solicited to the selected “prequalified “On-Call List” of professionals. The City will rank and choose the most qualified professional.
- Master Professional Service Agreement (MPSA) – selected categories have been identified to receive an MPSA for services. The City will issue a MPSA to the top ranked professionals in the identified categories. One or more agreements may be issued for each category.

Categories for On-Call

- Architecture
 - Design and Planning,
 - Building and Property Assessment and Programming
- Comprehensive Planning
 - Community Master Planning and Needs Assessments
 - Master Planning Services for Redevelopment and Revitalization
 - Land and Use Planning
- Construction Management (no work can be civil or vertical)
 - Project Management
 - On-Site Representative
 - Construction Inspections
 - Roadway and Stormwater Construction Inspections
- Landscape Architecture
 - Design and Planning
 - Streetscape Design and Planning - Urban Design and Planning
- Plan Reviews - Residential
- Roadway
 - Planning and Programming
 - Preliminary Design
 - Final Design – Plans, Specifications, and Estimate (PS&E)
 - Associated Stormwater, Drainage, and Utilities
- Stormwater
 - Drainage Area Assessments and Studies
 - Stormwater Infrastructure Design and Planning
 - Low-Impact Development and Water Quality Controls, Design and Planning
 - Stormwater Utility Fee Support
 - Floodplain Modeling and Remapping
 - FEMA Letters of Map Change
 - Flood Mitigation and Warning Systems
 - National Flood Insurance Program Community Rating System Management
- Traffic Engineering
 - Traffic and Safety Studies and Impact Analysis, Traffic Signal Design and Timing
 - Signing and Markings
 - Traffic Control Plans
 - Intersection Design and Analysis
 - Intelligent Transportation Systems Planning and Design
 - Parking – Design, Planning and Analysis
 - Railroad Crossing and Quiet Zones –
 - Planning and Design
 - Regulatory Compliance and Permitting

- Transit Consulting Services
 - Design and Planning
 - Transit Agency Support Services
 - Environmental Services for Transit Operations
- Transportation Planning
 - Local and Regional Thoroughfare Planning
 - Corridor Alignment and Development Studies
 - Multimodal (Pedestrian, Bicycle, and Transit) Design and Planning
 - Streetscape Design and Planning - Urban Design and Planning
- **Other Specialized Services**
 - Photography and Videography
 - Public/Private Financing

Categories for Master Professional Service Agreement

- Accessibility – Registered Specialist
 - Consulting Services
 - ADA Transition Plan
 - Plan Review and Inspection Services
 - Education and Training
- Bridge
 - Design and Planning
 - Plan Review and Inspections
- Building Commissioning
- Construction Estimating and Constructability
 - Cost Estimating Services
 - Constructability Review
 - Value Engineering Analysis
- Dam and Levee
 - Design and Planning
 - Plan Review and Inspections
 - Regulatory/Compliance and Permitting
- Economic Impact
 - Economic Impact Assessments
 - Financial Feasibility Studies
 - Market Consulting
- Environmental Services
 - Due Diligence
 - Clearance and Compliance Management
 - Remediation
 - Permitting and Planning
 - Archaeology and Cultural Resources
- Land Surveying and Plat Preparation
- Mechanical, Electrical, and Plumbing Engineering
 - Study, Assessments, and Analysis
 - Heating and Cooling Systems
 - Electrical and Lighting Design
 - Plumbing Systems
- Plan Review – Engineering

- Public Improvements
- Drainage Studies
- Floodplain Permitting
- Traffic Impact Analysis
- Plan Reviews – Commercial
- Building Inspections
- Real Estate Appraising
- Roadway Impact Fee and Proportionality Studies
- Structural Engineering
 - Design and Planning
 - Plan Review and Inspections
- Testing and Investigation Services
 - Geotechnical Engineering and Investigation
 - Material Testing Services
- Utility Engineering
 - Water Utility Engineering – Analysis and Design
 - Wastewater Utility Engineering – Analysis and Design
- **Other Specialized Services**
 - Consulting and/or *Administration for Local Government* TxDOT Related Projects
 - Real Estate Services

SECTION 5 EVALUATION AND SELECTION INFORMATION

5.1 SELECTION PROCESS:

- 5.1.1 This recruitment will allow the city to develop a list of prequalified professionals for city needs. It is the intent to issue multiple awards for this solicitation.
- 5.1.2 Upon receipt of the written qualifications for professional services the City's evaluation team will rank responses meeting the evaluation criteria and the requirements of the needed services outlined in the solicitation.
- 5.1.3 There are two categories for consideration.
 - Those selected for the on-call pool are defined as "prequalified" and internal users will solicit for services from the prequalified firms using the Cities Task Order Process.
 - Once a need, referred to as "Task," is identified, The City of New Braunfels may use a task order process (two-step process) or directly choose from the prequalified list for the selection of a qualified consultant from among the prequalified professionals.
 - Selection will consist of The City requesting a Qualifications package for a defined Task from the City's prequalified professionals list. City staff may select firms based on an evaluation of the written materials submitted for that particular task.
 - Those selected to receive a Master Services Agreement (MSA) will execute a contract for the specific category of services awarded. The MSA will be an-on call contract.

5.2 SELECTION CRITERIA:

The City of New Braunfels will review all Statement of Qualifications (SOQs) submitted in response to this solicitation using the criteria presented below and rate each firm by category. The firm will be recommended for pre-qualified pool or award of MSA by City Council based upon the published selected criteria noted below. The evaluation committee recommendations are subject to approval by the City of New Braunfels City Council.

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

Evaluation Criteria:

- **20 Points - Company - Relevant Background and Experience**
- **50 Points - Category Qualifications and Experience –**
- **30 Points – Proposed Personnel**

TOTAL POSSIBLE POINTS: 100

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 City reserves the right to request additional information or clarifications from all Respondents and to allow corrections of errors or omissions.

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

5.4 OPENED RESPONSE. 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.

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

5.6 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.

5.7 LIMITATIONS

- **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 RFQ does not commit the City to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFQ.
- **Solicitation Response to Remain Subject to Acceptance.** All responses will remain subject to acceptance for one hundred twenty (120) days after opening without acting.
- **City Council Approval Required.** The City of New Braunfels City Council may approve the Respondent selected to provide the services requested in this RFQ. The City reserves the right to authorize contract negotiations to begin without further discussion with Respondents submitting a Response. Therefore, each Response 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 Response.
- **Respondent's Obligation Regarding Evaluation:**
 - 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 Response. Failure of a Respondent to submit such information may cause an adverse impact on the evaluation of the specific Response.

- **Respondent Review of RFQ.** Respondents are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFQ and their Responses. Failure to do so will be at the Respondents' risk and will not be a determinative factor when awarding the contract for services.
- **Oral Non-Binding.** Any non-written representations, explanations, or instructions given by City staff or City agents are not binding and do not form a part of, or alter in any way, the RFQ, a written Contract pertinent to the RFQ, or the awarding of the contract.
- **Lobbying Prohibited.** Respondents are prohibited from directly or indirectly communicating with City Council members regarding the Respondent's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFQ. Respondents are prohibited from contacting city staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from the Purchasing Representative. Any violation will result in immediate disqualification of the Respondent from the selection process.

5.8 SUBCONTRACTING PROPOSAL

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

5.9 RESPONSE SPECIFICATIONS

- **Modification or Withdrawal of Response.** Responses cannot be altered or amended after the submittal deadline. Responses 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 Response 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 Response. **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 Respondent to withdraw a Response due to a material mistake in the Response.
- **Inquiries.** To ensure fair and objective evaluation, all questions related to this RFQ should be addressed only to the persons named in Section 3.5 of this solicitation.
- **RFQ Interpretation; Addendum.** Any interpretations, corrections, or changes to this RFQ will be made by addenda through:
 - <https://www.bidnetdirect.com/texas/city-of-new-braunfels>
 - and the City Website: <http://nbtexas.org/DocumentCenter/Home/Index/139>

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

SECTION 6

AWARD OF CONTRACT

6.1. SUCCESSFUL RESPONDENT'S DOCUMENTS: The successful Respondent will provide its Response and any negotiated amendments to the Response to the Office of the Purchasing Manager as an electronic Word or PDF file.

6.2. CONTRACT AWARD: The selection of a Respondent and the execution of a contract, while anticipated, are not guaranteed by the City. The City reserves the right to determine which Response is in the City's best interest and to award the contract on that basis, to reject any and all Responses, waive any irregularities of any Response, negotiate with any potential Respondent (after Responses are opened) if such is deemed in the best interest of the City.

6.3. CITY COUNCIL APPROVAL: The City Council will consider the final contract for approval unless the award amount is less than \$50,000.00. In the event the total amount of the contract is less than \$50,000.00, the contract will be awarded administratively.

6.4. FINAL CONTRACT:

- A. The selected Respondent will assume responsibility for all services offered in its Response, whether such services are provided by a subcontractor or joint venture arrangement. The successful Respondent will be considered the sole point of contact about contractual matters, including payment of all charges resulting from the contract.
- B. The successful Respondent will be required to enter a written contract with the City. The City's terms and conditions for this contract are included herein.
- C. This RFQ and the successful Respondent's Response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful Respondent.
- D. Be advised that exceptions to any portion of the RFQ may jeopardize acceptance of your Response. If exceptions are taken to the City's Contract, this will be clearly indicated and a full explanation given for each exception. It is required that the Response enumerate the specific clauses that the Respondent wishes to amend or delete and suggest alternative wording in the Response. In view of the length of time involved in obtaining the approval of legal counsel, Respondents are cautioned not to state that the Respondent's Response is subject to the Respondent's standard terms and conditions or that the final terms and conditions are subject to negotiation after award. This may result in the Response being deemed non-responsive, in which no further consideration or evaluation will be made.

ATTACHMENT A CATEGORIES FORM

Firm Name: _____

Indicate the professional services category or multiple categories that your firm and qualifications represent. You may indicate more than one discipline. Your proposal will be considered for each category requested.

Categories for Prequalified Pool

- Architectural
 - Design and Planning
- Architectural
 - Building and Property Assessment and Programming
- Comprehensive Planning
 - Master Planning Services for Redevelopment of Publicly Owned Property
 - Community Needs Assessments
 - Land and Use Planning
- Construction Management (no work can be civil or vertical)
 - Project Management
 - On-Site Representative
 - Construction Inspections
 - Public Works – Roadway and Stormwater Construction Inspections
- Landscape Architecture
 - Design and Planning
 - Streetscape Design and Planning - Urban Design and Planning
- Building Plan Reviews – Residential
- Roadway
 - Schematic Planning and Design
 - Stormwater and Drainage
- Stormwater Engineering
 - Stormwater Drainage Area Assessments and Studies
 - Stormwater Infrastructure Design and Planning
 - Low-Impact Development and Water Quality Controls, Design and Planning
 - Stormwater Utility Fee Support
 - Floodplain Modeling and Remapping
 - FEMA Letters of Map Change
 - Flood Mitigation and Warning Systems
 - NFIP Community Rating System Management

ATTACHMENT A - CATEGORIES FORM (CONTINUED)

Firm Name: _____

- Traffic Engineering
 - Engineering
 - Studies and Impact Analysis
 - Traffic Signal Design and Timing
 - Signage, Markings
 - Traffic Control Plans
 - Intersection Design and Analysis
 - Intelligent Transportation Systems, Planning and Design
 - Parking – Design, Planning and Analysis
 - Railroad Crossing and Quite Zone –
 - Planning and Design
 - Regulatory Compliance and Permitting
- Transit Consulting Services
- Transportation Planning
 - Local and Regional Thoroughfare Planning
 - Corridor Alignment and Development Studies
 - Bicycle and Pedestrian Design and Planning
 - Streetscape Design and Planning - Urban Design and Planning

Categories Receiving a Master Professional Service Agreement

- Accessibility – Registered Specialist
 - Plan Review and Inspection Services
 - ADA Assessments, Inspections with RAS Plan Reviews
- Bridge – Planning, Design and Inspections
- Building Commissioning
- Construction Estimating and Constructability
 - Cost Estimating Services
 - Constructability Review and Value Engineering Analysis
- Consulting and/or Administration for TxDOT Related Project
- Dam and Levee – Design, Inspection, Regulatory/Compliance and Permitting

ATTACHMENT A - CATEGORIES FORM (CONTINUED)

Firm Name: _____

- Economic Impact
 - Economic Impact Assessments
 - Financial Feasibility Studies
 - Market Consulting
- Environmental Services
 - Clearance, Compliance
 - Remediation,
 - Permitting and Planning
 - Archaeology and Cultural Resources –
 - Clearance, Compliance and Permitting
- Land Surveying and Plat Preparation
- MEP
 - Electrical and Lighting Design
 - Study and Analysis
- Plan & Development Reviews – Engineering Development Plan Reviews
 - Plan Review
 - Technical Review Assistance
 - Traffic Impact Analysis
- Plan Reviews – Planning and Development Services Plan Reviews
 - Building Permit Plan Reviews for Commercial Building
- Building Inspections
- Real Estate Appraising
- Roadway Impact Fee and Proportionality Studies
- Structural Engineering – Design and Analysis
- Testing and Investigation Services
 - Geotechnical Engineering and Investigation
 - Material Testing Services
- Utility Engineering
 - Water Utility Engineering – Analysis and Design
 - Wastewater Utility Engineering – Analysis and Design

ATTACHMENT A - CATEGORIES FORM (CONTINUED)

Firm Name: _____

Other Specialized Services not defined by Texas Government Code, Chapter 2254:

- Consulting and/or *Administration for Local Government* TxDOT Related Projects
- Real Estate Services
- Photography and Videography
- Public/Private Financing

ATTACHMENT B COMPANY INFORMATION

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) _____
- When organized: _____
- If a corporation, where incorporated: _____
- Federal Employer Identification Number: _____
- Texas Comptroller's Taxpayer Number, if applicable: _____
- DUNS NUMBER: _____
- Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

- _____
- _____
- _____

- Complete **A** below if you are a non-resident Respondent (your company's principal place of business is not in Texas). **Resident Respondents must check box B.**

A: Company is a non-resident Respondent. Its principal place of business is the state of _____

Check one of the following options:

Non-resident Respondents in the state of our principal place of business are required to propose _____ percent lower than resident Respondents by state law. A copy of the statute is attached.

Non-resident Respondents in the state of our principal place of business are not required to underbid resident Respondents in order to secure contract awards.

B: Company's principal place of business or corporate offices is in the State of Texas.

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 applicable, provide a list of officers of the company who, while in the employ of the company or the employ of previous companies, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

ATTACHMENT C VENDOR CERTIFICATIONS

Company name: _____

To demonstrate qualification to perform the scope of services, answer all questions listed below. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets, if applicable.

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 Response 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 Responses 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 the following are true and correct concerning your company's cost Response? Yes No

1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation.
2. That your cost Response is genuine and is not a collusive or sham cost Response;
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 Response, 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 Response or in any other cost Response, or to secure through any collusion, conspiracy, or Contract any advantage against the City of New Braunfels or any other respondent; and

4. The prices quoted in your cost Response are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful Contract 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

ACKNOWLEDGEMENT

THE STATE OF _____

COUNTY OF _____

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

Company's Name

Signature, Authorized Representative of Respondent

Title

**ATTACHMENT D
EXCEPTIONS AND ALTERNATIVES FORM**

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

Respondents are to comply with all requirements of this solicitation, otherwise the Response may be deemed non-responsive. Exceptions may be considered if they are presented with the Response 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 10)
*Note that if any exceptions are taken, all required information must be submitted as an attachment

In the event the Respondent 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, Respondent is in complete Contract with this entire solicitation including any proposed terms, conditions and business arrangements described herein.

(Authorized Signature)

Date

(Title)

ATTACHMENT E
DRAFT MASTER SERVICES AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as "CITY", and [REDACTED], hereinafter referred to as "PROFESSIONAL", together collectively referred to as "Parties".

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

WHEREAS, the PROFESSIONAL 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

PROFESSIONAL shall provide all equipment, materials, and personnel necessary to complete the Scope of Services outlined in Exhibit "A" and/or any Task Order resulting from 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 Consultant;
- b. This Agreement, along with any Exhibits, as they may later be modified by Amendments;
- c. The "Statement of Work" or "Task Order" 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 PROFESSIONAL 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. SERVICES

A. PROFESSIONAL will perform services under this Agreement with the degree of skill and care ordinarily provided by competent professional engineers, architects, or consultants practicing in the same or similar locality and under the same or similar circumstances

and professional license and as expeditiously as is prudent, considering the ordinary professional skill and care of a competent engineer, architect, or other consultant.

B. PROFESSIONAL shall provide IDIQ on-call professional services.

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

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

IV. PAYMENT

A. The parties agree that PROFESSIONAL shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Hourly Fee Schedule attached hereto and incorporated herein as Exhibit "B" and/or the assigned Task Order. Each project performed under this agreement shall not exceed \$50,000.00 without the prior approval of New Braunfels City Council.

B. Revision to Rates for Labor. The initial contracted rate sheet will be in place for the initial term of this agreement. Any change in the hourly rate established with this agreement shall be submitted in writing to the City not less than ninety (90) days prior to the requested effective date for review and approval.

V. TIME FOR PERFORMANCE

A. PROFESSIONAL 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 PROFESSIONAL, to completion. Each task assigned under this agreement will have a supporting scope of work with supporting quote which includes the associated level of effort/labor hours. In addition, each task will include a Completion Schedule, an example of which is attached hereto as Exhibit "C" and will become a part of this Agreement upon execution.

B. In the event PROFESSIONAL'S performance of this Agreement is delayed or interfered with by acts of the CITY, PROFESSIONAL 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 PROFESSIONAL, unless PROFESSIONAL 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 PROFESSIONAL have agreed in writing upon the allowance of additional time to be made.

VI. 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 PROFESSIONAL, 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 PROFESSIONAL participates in such other work.

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

VII. TERMINATION

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

VIII. INSURANCE

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

B. PROFESSIONAL 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 PROFESSIONAL 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. PROFESSIONAL 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. PROFESSIONAL shall also provide and maintain PROFESSIONAL Liability Errors and Omissions Insurance coverage to protect PROFESSIONAL and CITY from liability arising out of the performance of PROFESSIONAL services, if any, under this Agreement. Such coverage shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Such insurance shall be kept in effect for four years after the completion of the Agreement. If PROFESSIONAL fails to maintain the insurance covered during that time, CITY may pay the premiums to keep the insurance in effect and recover the cost from the PROFESSIONAL.

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

IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE

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

B. The PROFESSIONAL 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 PROFESSIONAL's performance, arising from any negligent act, error, or omission of the PROFESSIONAL, its officers, employees, servants, agents or subcontractors, or anyone else under the PROFESSIONAL'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 PROFESSIONAL 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 PROFESSIONAL, 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 PROFESSIONAL, its employees, contractor, agents and consultants.

D. PROFESSIONAL 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 PROFESSIONAL in performing this Agreement.

X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

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

XI. 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.**

XII. INTELLECTUAL PROPERTY INDEMNITY

A. **PROFESSIONAL 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. PROFESSIONAL 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, PROFESSIONAL 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, PROFESSIONAL SHALL AT ONCE MAKE EVERY EFFORT TO SECURE FOR CITY A LICENSE AT PROFESSIONAL'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF PROFESSIONAL IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, PROFESSIONAL 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, PROFESSIONAL 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.

XIII. ASSIGNMENT

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

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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL at:

NAME: Bregger Garrison, PE, LGPP

TITLE: Project Manager

ADDRESS: 9601 McAllister Freeway, Suite 1008, San Antonio, TX 78216

XVI. INVOICING

1. Invoices shall be directed to **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,
b. 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. PROFESSIONAL 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 PROFESSIONAL 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 subcontractor 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/taxPROFESSIONALs/standard-mileage-rates>)
3. Airline tickets shall be booked fourteen (14) days in advance. Only economy class tickets shall be booked.

4. PROFESSIONAL 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. 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 Agreement shall be performed at the place of delivery specified in the individual Task Order.

b. When PROFESSIONAL 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 PROFESSIONAL has furnished any required Deliverables, then CITY shall notify PROFESSIONAL in writing of CITY's acceptance of the Services ("Acceptance"). If CITY determines the Services to be deficient, CITY shall notify the PROFESSIONAL accordingly. The PROFESSIONAL shall, without delay, correct any deficiency without additional compensation. When the PROFESSIONAL can demonstrate that the deficiency has been corrected, the PROFESSIONAL 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 PROFESSIONAL in writing of acceptance of the Services. Acceptance shall not limit nor diminish PROFESSIONAL's warranties and other obligations under the Agreement.

XIX. REMEDIES

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

b. In the event of a breach of contract by PROFESSIONAL, 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 PROFESSIONAL and deduct those sums from amounts which CITY may owe PROFESSIONAL.

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

XX. FORCE MAJEURE

A. The nonperformance or delayed performance by PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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. PROFESSIONAL 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 PROFESSIONAL. The following shall not constitute a reason for extending the date for performance of the Services:

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

XXI. 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 PROFESSIONAL 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 PROFESSIONAL.

B. Upon termination for convenience, PROFESSIONAL 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.

XXII. TERMINATION FOR CAUSE

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

1. PROFESSIONAL'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. PROFESSIONAL's disregard of applicable laws or regulations;
3. PROFESSIONAL's disregard of the authority of the CITY's Agent;
4. PROFESSIONAL's violation in any material way of any provisions of this Agreement and the Agreement Documents;
5. Failure of PROFESSIONAL to pay subcontractors and/or material suppliers;
6. PROFESSIONAL'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 PROFESSIONAL.

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 PROFESSIONAL, or provide a Corrective Action Request to PROFESSIONAL.

C. If PROFESSIONAL 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 PROFESSIONAL. 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 PROFESSIONAL or any surety then-existing or which may thereafter accrue. No retention or payment of moneys due PROFESSIONAL by CITY will release PROFESSIONAL from liability.

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

XXIII. SUSPENSION

A. CITY may, at any time and at its sole option, suspend all or any portions of the PROFESSIONAL's performance under this Agreement by providing ten (10) calendar days written notice to the PROFESSIONAL. Upon receipt of any such notice, PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL's obligations for the portions of the Agreement not suspended.

B. CITY shall reimburse PROFESSIONAL for the cost of maintaining and protecting any portion of PROFESSIONAL'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, PROFESSIONAL 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 PROFESSIONAL shall submit a revised schedule for approval by CITY. If, as a result of any suspension, the cost to PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL.

XXIV. 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, PROFESSIONAL must continue to perform its obligations under this Agreement and CITY must continue to make payment to PROFESSIONAL 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. PROFESSIONAL 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 PROFESSIONAL under this Agreement until the dispute is settled through a predefined court process.

XXV. 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. PROFESSIONAL shall be aware of and shall comply with all federal, state and local laws, ordinances, codes (including applicable PROFESSIONAL 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, PROFESSIONAL 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, PROFESSIONAL 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. PROFESSIONAL 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.

XXVI. INDEPENDENT CONTRACTOR

a. PROFESSIONAL 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. PROFESSIONAL'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 PROFESSIONAL. However, because PROFESSIONAL's performance may be associated in the minds of the public with CITY, PROFESSIONAL shall ensure that all work by its employees, subcontractors and agents are performed in an orderly, responsible and courteous manner. **PROFESSIONAL AGREES TO INDEMNIFY AND HOLD HARMLESS CITY FROM ANY DAMAGE, JUDGMENT, LOSS, FINE, PENALTY OR INTEREST AWARDED TO PROFESSIONAL PERSONNEL OR ANY TAXING AUTHORITY BASED UPON A CLAIM THAT PROFESSIONAL PERSONNEL ARE EMPLOYEES OF CITY.**

B. Upon prior notification to and written approval of CITY, PROFESSIONAL may hire subcontractors to perform work hereunder. PROFESSIONAL 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 PROFESSIONAL of any subcontractor to which CITY has an objection. PROFESSIONAL, 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 PROFESSIONAL that bind the subcontractors to perform their subcontracts in accordance with the applicable requirements of the Agreement Documents. Upon the request of CITY, PROFESSIONAL shall furnish CITY with copies of such subcontracts. In addition, PROFESSIONAL agrees that it is PROFESSIONAL'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 PROFESSIONAL under this Agreement. PROFESSIONAL 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.

XXVII. ON-SITE ACTIVITIES

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

B. PROFESSIONAL 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 PROFESSIONAL shall be identified to CITY in writing.

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

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

E. PROFESSIONAL's personnel may not operate CITY's tools, vehicles, materials or equipment (collectively "CITY Equipment") without CITY Agent's prior authorization. If PROFESSIONAL borrows CITY Equipment, it is conclusively presumed PROFESSIONAL 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. PROFESSIONAL assumes full responsibility for the protection of the CITY Equipment;
3. PROFESSIONAL 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 PROFESSIONAL'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 PROFESSIONAL hereunder;
4. PROFESSIONAL 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. PROFESSIONAL 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.

A. PROFESSIONAL shall promptly report to CITY's Agent any defects in the work of others which impacts on PROFESSIONAL's Ancillary Services or the performance of its obligations

hereunder. Failure to report such defects constitutes acceptance of the conditions by PROFESSIONAL.

F. PROFESSIONAL shall keep all of its work areas free from trash and debris and keep its work areas “broom clean” on a continuous basis.

G. PROFESSIONAL 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.

XXVIII. 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 PROFESSIONAL, including, but not limited to those kept by the PROFESSIONAL, its employees, agents, assigns, successors and subcontractors. The PROFESSIONAL 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 PROFESSIONAL’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 PROFESSIONAL fails the audit, CITY shall be compensated by PROFESSIONAL as appropriate and as demonstrated by the audit findings. Specifically, in the case that the audit finds that PROFESSIONAL over-charged CITY, PROFESSIONAL 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 PROFESSIONAL.

XXIX. FINANCIAL OBLIGATIONS

A. PROFESSIONAL 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: PROFESSIONAL ceases to have the financial ability to perform this Agreement or any Order hereunder, if the PROFESSIONAL’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.

B. PROFESSIONAL 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 PROFESSIONAL’s financial statements indicate that PROFESSIONAL poses an unwarranted risk to CITY, then CITY may terminate this Agreement for its own convenience.

XXX. 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.

XXXI. PUBLICITY

PROFESSIONAL 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 PROFESSIONAL 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.

XXXII. AGREEMENT NON-EXCLUSIVE

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

XXXIII. 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 PROFESSIONAL shall substitute a provision by mutual agreement that preserves the original intent of the parties as closely as possible under applicable law.

XXXIV. INTERPRETATION AND RELIANCE

While this Agreement was initiated by CITY, PROFESSIONAL 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.

XXXV. 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 Professional, 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.

XXXVI. BUSINESS REVIEWS

CITY and PROFESSIONAL shall conduct business reviews at least annually. PROFESSIONAL shall attend business reviews at PROFESSIONAL'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 PROFESSIONAL shall be evaluated on ability to perform, quality, service, value, and innovation. PROFESSIONAL shall be required to submit updated qualifications to the CITY Agent upon request.

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

XXXVII. MISCELLANEOUS

The PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL made subject to this Article shall not constitute a change to the Order.

(Signatures on Following Page)

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

OWNER
THE CITY OF NEW BRAUNFELS

PROFESSIONAL
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