

CITY OF NEW BRAUNFELS



REQUEST FOR QUALIFICATIONS

**Traffic Signal Optimization
Solicitation # RFQ 25-034**

TxDOT CSJ 0915-00-301

Responses are Due: September 10, 2025

City Contact: Greg Gutierrez
Buyer
GGutierrez@newbraunfels.gov

Solicitation Notice

City of New Braunfels – RFQ 25-034 Traffic Signal Optimization TxDOT Project No.: 0915-00-301

The City of New Braunfels seeks qualifications for a professional to provide services related to “RFQ 25-034 Traffic Signal Optimization”

Solicitation documents may be obtained from Purchasing at the New Braunfels City Hall, 550 Landa Street, New Braunfels, Texas 78130 or go to:
<https://www.bidnetdirect.com/texas/city-of-new-braunfels>
<https://www.newbraunfels.gov/2694/Solicitations>

Request for Qualifications will be received by the City of New Braunfels until 3:00 p.m. (CDT) September 10, 2025 for “RFQ 25-034 Traffic Signal Optimization”.

Responses received after the exact time and date set for submission will not be accepted.

This is a project that will be funded by the Federal Highway Administration (FHWA).

Questions will be accepted until close of the day August 28, 2025 at 5:00pm.

Electronic Bids are accepted as per solicitation instructions. Physical Bids may also be submitted to:

City of New Braunfels, City Secretary, Attn: Purchasing
550 Landa Street, New Braunfels, TX 78130

Address and mark envelope:

RFQ 25-034 Traffic Signal Optimization
Due: 3:00 p.m. (CST) September 10, 2025

The City of New Braunfels reserves the right to reject any and all proposals or to accept those deemed most advantageous.

To Be Published:

- August 12, 2025
- August 19, 2025



SOLICITATION AND OFFER

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

Solicitation Number:

25-034 Traffic Signal Optimization

Request for Qualifications

Date Issued: August 12, 2025

SOLICITATION

- A non-mandatory Pre-Solicitation meeting will be **hosted virtually via Teams on August 26, 2025 at 10 A.M. (CST)**
- Questions concerning RFQ must be received, by email only, prior to **5:00P.M. CT on August 28, 2025**.
- Statement of Qualifications (SOQs) are due by: **3:00 P.M. (CT), September 10, 2025**
- Respondents must submit sealed Statement of Qualifications (SOQ) Electronically in Bidnet or manually 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.
- 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, or Fax offers accepted)

Greg Gutierrez,
Buyer

Email: ggutierrez@newbraunfels.gov
Phone: (830) 221-4398

5% Response Bond Required: YES NO (If YES, See information in Section 5)
100% Payment Bond Required: YES NO (If YES, See information in Section 5)
100% Performance Bond Required: YES NO (If YES, See information in Section 5)

OFFER

(This portion must be fully completed by Respondent.) 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.

The Owner reserves the right to reject any and all bids and may reject a bid if a bidder does not acknowledge receipt of all addenda issued by the Owner.

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:

Signature:

Date:

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

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SECTION 3

SCOPE OF WORK

3.1 BACKGROUND

Since 1845, the City of New Braunfels has provided a unique and diverse quality of life for its residents, visitors, and business community. Known for its German and Hispanic heritages, the City is nestled at the edge of the Texas Hill Country at the confluence of the Comal and Guadalupe rivers. New Braunfels is home to the world-famous Schlitterbahn Waterpark as well as Texas' oldest dancehall (Gruene Hall) and bakery (Naegelin's).

The City of New Braunfels has a population of over 110,000 people and was the third-fastest growing city in the country from 2010-2019 (+56%). It covers approximately 45 square miles and is located between the San Antonio and Austin metro areas along the rapidly growly I-35 corridor.

The City of New Braunfels was awarded federal funding through the Alamo Area Metropolitan Planning Organization (AAMPO) Carbon Reduction Program (CRP) to collect data and implement updated traffic signal timing plans at the City's 60 traffic signals, including 6 synchronized corridors. Analysis of traffic patterns due to new commercial and residential developments will help identify priority corridors and implement improvements in all signal timings that would help to reduce stops, travel time, fuel consumption and overall emissions. Data collected for this project will not only be used to evaluate and optimize existing signal timings but will also be used to identify and implement short-term improvements such as lane assignment changes or signal head changes. The data could also identify longer term improvements for other programs, such as future bonds.

It is important to evaluate every signalized intersection operated by the City every five years to ensure that the signal timing is optimized for the traffic conditions and that further operational enhancements are not needed. Changes in traffic patterns due to new commercial and residential developments demand that this analysis occurs regularly. Locations along the City's top 100 corridors experience the most traffic and therefore should be prioritized for analysis. This project will reduce travel time, number of stops, emissions, and fuel consumption for vehicles traveling on the identified priority corridors and minimize delays for all drivers. Data collected for this project will not only be used to evaluate and optimize existing signal timings but will also be used to identify and implement short term improvements (such as lane assignment changes or signal head changes) and also identify longer term improvements for other programs (such as future bond programs). The results of previous similar citywide projects showed an overall result of 32% fewer vehicular stops and 12% average reduction in travel time which resulted in a reduction of CO emissions by 51%.

This is a FHWA funded project supported by the Texas Department of Transportation (TxDOT). This project is funded with federal assistance through Federal Highway Administration (HWA) and the Alamo Area Metropolitan Planning Organization (AAMPO).

The City of New Braunfels (the "City") is seeking Statement of Qualifications from professional service providers for design/engineering/architectural services for an FHWA funded project: [Carbon Reduction Traffic Signal Optimization Project and CSJ 0915-00-301. Responses are solicited for this service in accordance with the terms, conditions, and instructions set forth in this solicitation.

3.2 SCOPE OF WORK

The City of New Braunfels is seeking Professional Planning, Design, and Engineering expertise for the collection of data and implementation of updated traffic signal timing plans along the City's top 100 corridors. Improvements in signal timing can reduce stops, travel time, and emissions, and have been shown to typically have very high benefit to cost ratios. Specific locations to analyze and specific tasks will be provided on a task order basis. However, it is anticipated that, in general, the following tasks will be performed:

1. Data collection

This task involves the collection of traffic volume and intersection data. This task contains the following subtasks:

- 7-day traffic counts/24-hour traffic counts
- Intersection turning movement counts
- Travel time/delay information
- Intersection parameters and photos to include:
 - Number of lanes on each approach
 - Lane assignments
 - Type and number of signal displays
 - Type and location of controller cabinet
 - Type of vehicle and pedestrian detection used
 - Posted speed limits and traffic signs at the intersection
 - Width of travel lanes and each pedestrian crossing
 - Location and Americans with Disabilities Act (ADA) compliance of pedestrian ramps

2. Timing Plan Development and Implementation

Developing and implementing optimal traffic signal timing plans is a very crucial aspect of the project. The operation of the traffic signals is the most visible of all the project components and will most likely be the component by which citizens measure the overall success of the project. Due to this, it is imperative that due diligence is exercised in establishing optimal timing plans.

This task contains the following subtasks:

- Assessment of Existing Conditions
 - Field Observations
 - Synchro Models of Existing Conditions
- Development of short-term operational improvement recommendations including, but not limited to:
 - Signal head replacements (i.e. changing from protected/permitted left turns to protected only, and vice-versa, Right Turn (RT) overlaps);
 - Phasing changes (i.e. addition or removal of split phasing, changing the wiring and phasing scheme of the intersection);

- o Detector replacements or additions; and,
- o Other low-cost improvements such as signing and striping modifications.
- Timing plan development, including:
 - o Basic Signal Controller Interval Timing
 - o Coordinated Timing Plan Development
- Review of Existing Conditions and Recommended Timing with the City Staff
- Timing file/phase layout development
- Timing plan implementation

SECTION 4 INSTRUCTIONS FOR RESPONSE

4.1 PROHIBITED CAMPAIGN CONTRIBUTIONS

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections beginning on the *10th business day after a contract solicitation has been released through the 30th calendar day following the approval by City Council (“blackout” period):

- (1) Any individual seeking a high-profile contract;
- (2) Any owner, officer, officer of board, and executive committee member of an entity seeking high-profile contract, excluding board officers and executive committee members of 501 (c)(3), 501(c)(4) and 501 (c)(6) non-profit organizations not created or controlled by the City whose board service is done strictly as a volunteer with no financial compensation and no economic gain from the non-profit entity;
- (3) The legal signatory of the high-profile contract;
- (4) Any attorney, lobbyist or consultant hired or retained to assist the individual or entity in seeking a high-profile contract;
- (5) Subcontractors hired or retained to provide services under the high-profile contract; and
- (6) Any first-degree member of the household of any person listed in (1), (2), (3) or (5) of this subsection.

A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution was made by any of these individuals during the “blackout” period.

****For this solicitation, the first-day contributions are prohibited is August 11, 2025***

The first day contributions may be made is the 31st day after the contract is approved at a City Council.

For additional communication information, see refer to Section 4.6-8 of this solicitation

4.2 SUBMISSION OF SOQs

- (a) OPTION 1: ELECTRONIC SUBMISSION. The City of New Braunfels has partnered with Bidnet as its e-procurement site. Electronic submissions can be made via the Bidnet website.

You must register as a vendor in order to complete an electronic submission. Additional paper documentation is NOT required when submitting electronically.

OR

- (b) OPTION 2: HARD COPY SUBMISSION. Deliver your Response, or changes to your Response, in SEALED ENVELOPES OR PACKAGES identified on outside with Respondent's name and address. Failure to submit Response in this manner may subject Respondent to disqualification. **Response 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 Response envelope or package must state:

"RFQ 25-034 Traffic Signal Optimization"

It is the sole responsibility of the Respondent to ensure timely delivery of the Response. 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. **RESPONSES RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE ACCEPTED OR CONSIDERED.**

- (c) Responses may not be withdrawn after the time set for the closing, unless approved by the City.

4.3 SOLICITATION SCHEDULE

DATE	MILESTONE
August 12, 2025	RFQ issued on https://city-of-new-braunfels.public-portal.us.workdayspend.com/
August 26, 2025	Pre-submittal Conference – VIRTUAL TEAMS LINK
August 28, 2025	Deadline for Submission of Written Questions shall be 5:00 P.M.
September 10, 2025	Responses Due – 3:00 P.M.
September/October	City Evaluation

October	Anticipated City Recommendation to TxDOT for Concurrence
November	Anticipated Contract Award to City Council

4.4 TERMS AND CONDITIONS

Terms and Conditions that apply to this solicitation can be found in EXHIBIT A: SAMPLE AGREEMENT.

4.5 RESPONSE CONTENT

Respondents shall limit Responses for Tab 3-5 to ten (10) pages . Each Response, completed and signed by person(s) authorized to bind individual or legal entity, shall include the following in one envelope/package:

- **TAB 1: Solicitation and Offer Form:** Respondent must complete, and sign form located on Page 2.
- **TAB 2: Documents:**
 - a. Acknowledgement of Addenda (if applicable)
 - b. ATTACHMENT A: Company Information
 - c. ATTACHMENT B: Respondent Certifications
- **TAB 3: Statement of Qualifications**
 - **Background, Qualifications of Firm, Key Personnel, and Key Sub-Consultants**
 - Proposed Key Personnel/Organizational Chart (1 pages)
 - Resumes (3 page per resume)
- **TAB 4: Understanding of the Project and Proposed Management Plan and Schedule (3 pages)**
- **TAB 5: Relative Experience**
 - **Project List of similar projects performed within the last five (5) years (1page)**
 - **General Experience (2 pages)**
- **TAB 6: Other Required Documents:**
 - One copy of Certificate of Insurability completed and signed
 - ATTACHMENT A – COMPANY INFORMATION
 - ATTACHMENT B – VENDOR CERTIFICATIONS
 - ATTACHMENT C - RECEIPT OF FEDERAL CLAUSES
 - ATTACHMENT D – DBE – PART 1 - REQUIREMENTS
 - ATTACHMENT D – DBE – PART 2 - CONTRACTOR'S LETTER OF INTENT
 - ATTACHMENT E – CERTIFICATION AND RESTRICTIONS ON LOBBYING
 - ATTACHMENT F – DEBARMENT AND SUSPENSION CERTIFICATION
 - ATTACHMENT G – CONFLICT OF INTEREST STATEMENT
 - ATTACHMENT H - 1295 FORM
 - ATTACHMENT I – EXCEPTIONS and ALTERNATIVES (Optional)

- **TAB 7:Deviations from RFQ:**

ATTACHMENT C: Exceptions and Alternatives Form. Respondent is to indicate any deviations being offered in lieu of specified language referenced in the solicitation and/or sample agreement.

4.6 RESTRICTIONS ON COMMUNICATIONS

The following restrictions on communications apply to this solicitation: Respondents are prohibited from contacting 1) City officials regarding the RFQ or submittal from the time the RFQ has been released until the contract is posted for consideration as an agenda item during a meeting designated as an A session; and 2) City employees from the time the RFQ has been released until the contract is approved at a City Council “A” session.

Restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFQ and/or proposal submitted by Respondent.

Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's submittal from consideration.

4.7 CONTACT FOR QUESTIONS

All questions concerning this solicitation shall be in writing to: Greg Gutierrez, Buyer, via email qgutierrez@newbraunfels.gov. All prospective Respondents are hereby instructed to **not** contact any member of the City of New Braunfels' City Council, or City of New Braunfels' staff members other than the noted contact person. Any such contact may be cause for rejection of your Response.

4.8 RESPONSES TO QUESTIONS/INQUIRIES

Responses to questions/inquiries that directly affect an interpretation or change to this RFQ will be issued in writing by Purchasing as an addendum and posted via Bidnet.

All such addenda issued by the Purchasing Representative before the time that Responses are received shall be considered part of the RFQ. Only those inquiries the Purchasing Office replies to by addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. Respondents shall be responsible for monitoring the City's website or Bidnet for any updates pertaining to the solicitation described herein. Various updates may include addenda, cancellations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

4.9 PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled, for **August 26, 2025 at 10:00 a.m. (CST)**. The Pre-Submittal Conference will be held via TEAMS meeting. Prospective Respondents may join the Teams meeting using the following instructions:

Join the meeting now

Meeting ID: 263 265 923 417 4

Passcode: Eq7oj9E2

Dial in by phone

[+1 346-352-9877,,971423425#](tel:+13463529877,,971423425#) United States, Houston

[Find a local number](#)

Phone conference ID: 971 423 425#

Attendance at the Pre-Submittal Conference is optional, but highly encouraged.

Respondents who join the Pre-Submittal Conference are highly encouraged to email the solicitation's point of contact person confirming Respondent attendance and participation through the Teams link.

4.10 COMPETITIVE RESPONSES

Responses will not be opened publicly. However, a list of respondents will be posted as part of the public solicitation on the City website.

SECTION 5 EVALUATION OF RESPONSES

5.1 SELECTION PROCESS

It is the intent of the City to make a single award from this solicitation, based on evaluation criteria listed in this solicitation and Respondent's submitted Response; however, the City will award in the manner deemed most advantageous to the City.

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

The Respondent selected for award will be awarded a Contract to provide services as specified contingent upon TxDOT (for FHWA projects) and City Council approval.

5.2 EVALUATION CRITERIA: The City of New Braunfels will review all Responses submitted in response to this solicitation using the criteria presented below and rank each Respondent. A Respondent will be recommended for award to 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.

The following Evaluation Criteria shall be used, in recommending the award of this Contract:

5.2.1 STATEMENT OF QUALIFICATIONS

Respondent shall provide a narrative document, as outlined in the **Statement of Qualifications** below, addressing all evaluation criteria in **Section 5.2** of this RFQ considering the project defined in this solicitation. Sufficient information regarding Respondent's past projects and key personnel's experience shall be provided in Respondent's submittal to indicate its team has met or exceeded the minimum qualifications provided in **Section 5.2** of this RFQ in submittal.

A. Background, Qualifications of Firm, Key Personnel, and Key Sub-Consultants – TAB 3 - (40 Points)

Respondent shall respond to the following items, as they relate to Scope of Work:

- 1. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as “Tab 3”)** –Provide a detailed organizational chart of Respondent's proposed team, identifying key personnel who will be committed to work on the various tasks for this Contract (one (1) page).

Label assignments as:

- Project Manager
- Task Leader

- 2. Resumes (Indexed and Labeled as “Tab 3”)** – Respondent shall submit three (1) page resumes for all its key team members. Resumes should link to project sheets and also may include additional previously-completed relevant projects not highlighted in the project sheets.

Resumes also shall include:

- the license type (if applicable) and number of years licensed,
- Number of years employed with the firm
- Number of years' experience in proposed role corresponding to the assignments included in the organizational chart

B. Understanding of the Project and Proposed Management Plan (30 Points)

Respondent shall describe its understanding of the Project and specific issues and challenges Respondent likely sees shall be involved, as well as the availability of labor resources (Respondent's capacity to perform) in executing the scope of work required. Respondent shall submit information in a brief narrative plan clearly and concisely describing the challenges it foresees and its approach to managing the Project.

1. Project Understanding (Indexed and Labeled as “Tab 4”)

Respondent shall limit its response to the following items to two (2) pages:

- a. Describe Respondent's understanding of the primary objectives of the Project; and
- b. Describe the constraints and technical challenges related to the evaluation and implementation Respondent foresees and Respondent's approach to addressing each.

2. Proposed Management Plan (Indexed and Labeled as “Tab 4”)

Respondent shall limit its response to the following items to a total of one (1) page:

- a. Describe Respondent's project management approach and team organization, for the provision of the services outlined in this solicitation;
- b. Describe Respondent's Quality Control/Quality Assurance process, approach and capabilities to maintain quality control of all documents;
- c. Describe Respondent's approach to managing the quality of Subcontractors and Subconsultants;
- d. Describe Respondent's ability to coordinate work with all Project stakeholders; e. Describe Respondent's approach to assuring timely completion of projects, including methods for schedule recovery, if necessary.

**C. Relative Experience (30 Points)
(Indexed and Labeled as “Tab 6”)**

The City is interested in evaluating Respondent's team (including Sub-consultant(s), if applicable) experience with local processes and practices, as may be evidenced by working through federal funded projects . In narrative form, using a maximum of two (2) pages for Respondent's response and one (1) page for Sub-consultant(s) response, if applicable, briefly describe Respondent's team experience in the following areas, referencing projects related to that experience.

1. Experience (Indexed and Labeled as “Tab 6”) – City shall consider the relevance of past experience of Respondent. Respondent shall provide a narrative, on (1) page, describing the Respondent's qualifications, as they relate to the referenced scope of services in this solicitation.

2. Project Experience (Indexed and Labeled as “Tab 6”) – Respondent's submittal shall include a maximum of two (2) project sheets, limited to one (1) page for each project included, which shall describe similar projects Respondent has

completed within the last five (5) years. Each project sheet shall include the following:

- Name and Description of the completed project, including any similarity to the Project defined in this solicitation;
- Year(s) of work on the cited project;
- Respondent's role in the cited project;
- Project Manager;
- Superintendent;
- Cited project's original and final contract amounts (explain inconsistencies);
- Cited project's proposed completion date and the actual completion date achieved (explain inconsistencies);
- Cited project's owner's name and the name of the representative (if different) who served as the day-to-day liaison for the cited project, in the following format: a. Name of Owner: _____
- b. Name of Owner's representative:
 - Representative's Phone Number:
 - Representative's E-mail:

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

5.3 OPTIONAL. The City may determine that it is necessary to interview short-listed firms prior to making a recommendation to the City Council. The City reserves the right to determine whether an interview will be conducted for every proposal.

5.4 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 checking for conflicts of interest, verification of debarment, and 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.

5.5 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.

5.6 Professional services are procured in accordance with Federal requirements, assurances and certifications that support 23 CFR 172 and 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.

This Contract will be subject to and controlled by the Charter and ordinances of the City of New Braunfels and all applicable laws, rules and regulation of the State of Texas and the Government of the United States of America. Contractor shall, during the performance of the work, comply with all applicable City of New Braunfels codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

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

5.8 LIMITATIONS

- **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.

5.9 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.

5.10 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:
 - Bidnet
 - City's Website

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

5.11 INDEMNITY AGAINST LOSS

- A. Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of the contractor, its employees, subcontractors, agents and consultants for the accuracy and competency of their supplies, equipment, or services provided hereunder; nor shall such approval be deemed to be an assumption of such responsibility by City of New Braunfels for any defect, error or omission in the supplies, equipment, or services provided by the contractor, its employees, subcontractors, agents and consultants. Contractor shall indemnify, hold harmless and defend City of New Braunfels, their officers,

agents and employees from any loss, damage, liability or expense, including reasonable attorney's fees, on account of damage to property and injuries, including death, to all persons, including employees of the contractor or any of its consultants, which may arise from any negligent act, error or omission, on the part of the contractor, its employees, agents, and consultants, pursuant to this contract.

B. The City does not assume any liability to third persons, nor will the City reimburse the Contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder, and Contractor further agrees to provide the defense for, and indemnify and hold harmless City from any and all claims, suits, causes of action, and liability, arising in connection with this contract.

5.12 NON-NEGOTIABLE TERMS

The following terms or conditions are not negotiable:

- a. **Independent Contractor:** Respondent understands, accepts and agrees, if selected, it and all persons designated by it to provide services in connection with a contract, is/are and shall be deemed to be Independent Contractor(s), responsible for its/their respective acts or omissions, that City shall in no way be responsible for Respondent's actions and that none of the parties to this award shall have authority to bind the other or to hold out to third parties that it has such authority.
- b. **Unfunded Liability.** The City will not incur a debt or obligation to pay selected Contractor 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.
- c. **Advance Payments.** The City will not make advance payments to a selected Proposer or any third party pursuant to this RFP or resulting contract.
- d. **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.
- e. **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.
- f. **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.
- g. **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.

- h. **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.
- i. **Venue; Applicable Law.** This solicitation and the awarded contract shall comply with all applicable Federal law and the laws of the state of Texas to the extent that they do not conflict with Federal law. 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.

5.13 STATE AND LOCAL LAW DISCLAIMER

All regulations listed in this document apply to the Third-Party Contractor in the same manner as they apply to The Authority. Offers will be received and reviewed, but no contract shall be awarded until all applicable Federal, State and Local Government regulations have been complied with.

5.14 FEDERAL REQUIREMENTS AND SUPPORTING DOCUMENTATION

23 CFR 172.9 (c) - All contracts and subcontracts shall include the following provisions,

- (i) Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- (ii) Notice of contracting agency requirements and regulations pertaining to reporting;
- (iii) Contracting agency requirements and regulations pertaining to copyrights and rights in data;
- (iv) Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- (v) Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;
- (vi) Standard DOT Title VI Assurances (DOT Order 1050.2);
- (vii) Disadvantaged Business Enterprise (DBE) assurance, as specified in [49 CFR 26.13\(b\)](#);
- (viii) Prompt pay requirements, as specified in [49 CFR 26.29](#);

- (ix) Determination of allowable costs in accordance with the Federal cost principles;
- (x) Contracting agency requirements pertaining to consultant errors and omissions;
- (xi) Contracting agency requirements pertaining to conflicts of interest, as specified in [23 CFR 1.33](#) and the requirements of this part; and
- (xii) A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.

(2) All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in [49 CFR part 20](#).

5.15 FEDERAL-AID PROVISIONS

The proposing Consultant's services are federally funded, which necessitate compliance with additional requirements. Federal Procurement Regulations establish certain submissions be required from any third-party contract the City enters into with any vendor. In order that the City may be compliant with the Federal Requirements of each vendor is required to complete and submit as a part of the offer package, completed certifications as defined in this section. Also required are the supporting Attached forms. The proposing Consultant shall complete and submit the following forms with the proposal to be considered responsive. ***These forms and instructions are provided as exhibits A-H.***

Failure to supply the required certifications shall result in the determination of the offer as "non-responsive".

5.15.1 DISADVANTAGE BUSINESS ENTERPRISE (DBE) INFORMATION

This solicitation is financed in whole or in part and therefore subject to Title 49, Code of Federal Regulations, Part 26.13 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". To ensure equal participation for Disadvantaged Business Enterprise (DBE) groups specified in 49 CFR 26.5, a DBE participation is required. Only participation by certified DBEs will count toward the contract goal for this solicitation. In order to count toward a contract goal, a firm must be certified by the Texas Unified Certification Program (CUCP) and possess the work codes applicable to the type of work the firm will perform on the Agreement by the SOQ submittal due date. For a list of work codes, go to <https://www.txdot.gov/business/disadvantaged-small-business-enterprise/dbe-airport-concessions/dbe-certification-tucp.html>

It is the proposer's responsibility to verify that the DBE firm is certified as a DBE by the specified SOQ submittal due date and time. For a list of DBEs certified by the CUCP.

Reference "Statement of Qualifications Submittal Requirements" for detailed information and references to the required forms. Required forms will be made part of the agreement. Failure to meet the DBE goal or Good Faith Effort requirements and provide required DBE participation at due date and time of SOQ submittal may result in the SOQ submittal being rejected as non-responsive.

- **Recommended Vendor.** The most qualified and recommended vendor must submit DBE commitments to satisfy the Race-Neutral **DBE goal for this project of 0%**.
- Race-neutral DBE participation is encouraged and suggested. Race-neutral participation is achievable through various opportunities such as DBE material supplier, subcontracting, etc.

5.15.1.1 Prompt Payment:

- The Contractor is required to pay its DBE subcontractors performing Work related to this Contract and the Project for satisfactory performance of such Work no later than thirty (30) days after the Contractor's receipt of payment for that Work from contractor per 49 CFR 26.29.
- The Contractor may not hold retainage from its DBE subcontractors and must return any retainage payments to those DBE subcontractors within thirty (30) days after the DBE subcontractor's Work related to this Contract and the Project is satisfactorily completed or must return any retainage payments to such DBE subcontractors within thirty (30) days after incremental acceptance of the DBE subcontractor's Work by Metro and Contractor's receipt of the partial retainage payment related to the DBE subcontractor's work.

5.15.2 EQUAL EMPLOYMENT OPPORTUNITY

All responsible proposers will receive consideration for award of contract without regard to race, color, religion, sex, or national origin.

5.15.3 NONDISCRIMINATION: The City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

5.15.4 TERMINATIONS

Upon written notice, the Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient

has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Contractor understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Contractor has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Contractor to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

5.15.5 ANTI-LOBBYING AND PROCUREMENT (Certification- Exhibit E)

Lobbying activities or representations by the Bidder are prohibited between the date that the Invitation for Bid (IFB) is issued and the date of contract execution. During a no-contact period, a bidder shall make a representation only through the authorized contact person.

During the no-contact period, a bidder may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a bidder.

The prohibition of a representation during the no-contact period applies to a representation initiated by a bidder, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person

Contractors who apply or submit for an award of \$100,000 or more shall execute and submit with their bid or offer, the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

5.15.6 INSURANCE AND LIABILITY COVERAGE

During the period of this contract, Contractor shall maintain at his expense, insurance with limits not less than those prescribed in the Contract Documents. Refer to the City's Insurance Requirements in Exhibit A.

5.15.7 ACCESS TO RECORDS

Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FHWA Recipient or a sub-grantee of the FHWA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

Where any Purchaser which is the FHWA Recipient or a sub-grantee of the FHWA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FHWA does not require the inclusion of these requirements in subcontracts.

5.15.8 All submittals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent clearly should be noted on the page(s) where confidential information is contained; however, City cannot guarantee that it shall not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law or pursuant to a Court order.

5.15.9 PATENTED DEVICES, MATERIAL, AND PROCESSES

Indemnify and save harmless the Owner from any claims for infringement from the Contractor's use of any patented design, device, material, process, trademark, or copyright selected by the Contractor and used in connection with the work. Indemnify and save harmless the Owner against any costs, expenses, or damages that it may be obliged to pay, by reason of this infringement, at any time during the prosecution or after the completion of the work.

5.15.10 CONFLICT OF INTEREST QUESTIONNAIRE (EXHIBIT G - 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.

5.15.11 CERTIFICATE OF INTERESTED PARTIES (EXHIBIT H - FORM 1295)

A proponent that will be awarded a contract that is greater than \$50,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm 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 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. This contract is funded by FHWA through The Department of Transportation, and they will authorize the contract before the City will make a recommendation for award to City Council.

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
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.

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT B 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

4. GOVERNMENT CODE § 2252.152 VERIFICATIONS:

- A. Contractor shall verify that it's named company will comply with the provisions of Texas Government Code **§ 2252.152**: Yes No

Contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organization prohibited.

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under

Texas Government Code §2270.0201 or §2252.153 "Listed Companies". Consultant/Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's/Contractor's certification. If found to be false, or if Consultant/Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

ACKNOWLEDGEMENT

THE STATE OF _____

COUNTY OF _____

I certify that I have read all the specifications and general RFQ requirements and do hereby 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

Bidder's Full Name

Signature, Authorized Representative of Respondent

Title

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT C

RECEIPT OF FEDERAL CLAUSES

PROJECT: CITY OF NEW BRAUNFELS Traffic Signal Optimization

DATE: _____

COMPANY NAME: _____

I have reviewed the attached Federal Clauses for Procurement of Professional Services in conjunction with The City of New Braunfels [Project Title] for which has provided qualifications for _____

(Company Name)

consideration and hereby affirm that _____

(Company Name)

shall conform to and abide by all aforementioned requirements as set forth and any amendments thereto.

Authorized Representative: _____

Title: _____

Company Name: _____

Date: _____

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT D- PART 1

DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

Project:

City: City of New Braunfels

County: Comal

CSJ No: 0915-00-301

The following goal for disadvantaged business enterprises is established:

DBE 0%

Certification of DBE Goal Attainment

By signing the Bid, the Bidder certifies that the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal.

- Race-neutral DBE participation is encouraged and suggested. Race-neutral participation is achievable through various opportunities such as DBE material supplier, subcontracting, etc.

Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of requirements of the proposal. As a result, the bid guarantee of the Bidder will be property of OWNER and the Bidder will be excluded for rebidding on the project when it is re-advertised.

CONTRACTOR

Company

Date

Authorized Signature

Printed Name of Signer

Title of Signer

Email

Phone Number

**THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE
ATTACHMENT D – PART 2
DISADVANTAGED BUSINESS ENTERPRISE(DBE)
CONTRACTOR'S LETTER OF INTENT**

FIRM – Prime Contractor	
EMAIL	

The undersigned intends to perform work in connection with the above project as a DBE in the following capacity (check one):

Individual Corporation
 Partnership Joint Venture

Years in Business: _____ Number of Employees: _____

Annual Gross Receipts of your Firm: Under \$150,000 \$150,000 to \$300,000
 \$300,000 to \$500,000 \$500,001 and up

Special Status: DBE Small Business

The disadvantaged business status of the undersigned is confirmed by:

- A. On the reference list of Disadvantaged Business Enterprises dated _____, 2025 _____ or
- B. On the attached Disadvantaged Business Enterprise Identification Statement.
- C. **Goal of 0%:** The undersigned is prepared to perform the following work in connection with the above project (*specify in detail the work items or parts thereof to be performed*). *Indicate portions of the work that are self-performed and subcontracted.*
 - C.1 Race-neutral DBE participation is encouraged and suggested. Race-neutral participation is achievable through various opportunities such as DBE material supplier, subcontracting, etc.

If Self-preforming	Description of Work:	Certification Type:	Subcontract Amount	% Meeting DBE	
List of Primary Subcontractors	Description of Work	List of Primary Subcontractors			
1)					
2)					

3)				
4)				
Sub-total Contract Amount:				\$
Sub-total DBE %				%

The foregoing work will not be sublet to a Non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you, conditioned upon your execution of an agreement with the City of New Braunfels.

Company

Date

Authorized Signature

Printed Name of Signer

Title of Signer

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

**THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE
ATTACHMENT E
CERTIFICATION AND RESTRICTIONS ON LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bidder or offer exceeding \$100,000).

The Bidder certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C. 135©(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT F

DEBARMENT AND SUSPENSION CERTIFICATION

49 CFR Part 29

PROJECT: RFQ 25-034 – Traffic Signal Optimization

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS–PRIMARY COVERED TRANSACTIONS

Instructions For Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended,

declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT G

CONFLICT OF INTEREST STATEMENT

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
1 Name of vendor who has a business relationship with local governmental entity.		OFFICE USE ONLY Date Received
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. _____ Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
<p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 _____ Signature of vendor doing business with the governmental entity _____ Date		

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

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

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

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

- (2) the vendor:

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

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

- (2) the date the vendor becomes aware:

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

ATTACHMENT H
1295 FORM

THIS DOCUMENT MUST BE EXECUTED AND SUBMITTED WITH RESPONSE

ATTACHMENT I
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)

EXHIBIT A **INSURANCE RIDER**

INSURANCE AND LIABILITY: During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- A. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- B. Provide City of New Braunfels a waiver of subrogation.
- C. Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- D. Provide the City Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.
- E. The City shall be indemnified from any acts of the vendor resulting in a legal claim for damages and require riders to waive any claim against the City resulting from their use of these services.

Submit a certificate of insurance reflecting the following coverages.

- A. 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).
- B. 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.
- C. 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.
- D. PROFESSIONAL shall provide and maintain Workers Compensation with statutory limits.
- 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.

EXHIBIT B
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM PROVISIONS

The City of New Braunfels has established a Disadvantaged Business Enterprise (DBE) Goal in accordance with the Texas Department of Transportation (DOT). The participation objective of the DBE program is to ensure that the City complies with 49 CFR Part 26, and to remedy past and current discrimination against disadvantaged businesses. The program ensures a “level playing field” and fosters equal opportunity in all Texas Department of Transportation and Federal Highway Association assisted contracts that include highway and street construction.

DBE OBLIGATION

The City of New Braunfels and/or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the City and its contractors shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of TXDOT-assisted contracts.

THE DBE GOAL FOR THIS PROJECT IS 0%

DEFINITIONS

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (7) *Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:*
 - (i) *One concern controls or has the power to control the other; or*
 - (ii) *A third party or parties controls or has the power to control both; or*
 - (iii) *An identity of interest between or among parties exists such that affiliation may be found.*
- (2) *In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.*

Commercially Useful Function—a DBE is considered to perform a commercially useful function when it:

- (1) *Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,*

(2) *Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.*

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantage business enterprise or *DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (3) *Good faith efforts* mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

CERTIFICATION

1. A contractor/bidder/proposer shall submit to the City a copy of the DBE Certification Affidavit, for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers in the performance of work.
2. The Certification Affidavit must be from a firm that has been certified by one of the five (5) certifying agencies of the Texas Unified Certification Program (TUCP). The five agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.
3. A firm must be certified on or before the bid/proposal due date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for a certification application to have been submitted by the deadline.

COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, (provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners.

GOOD FAITH EFFORTS

The bidder/proposer shall demonstrate, to the satisfaction of the DBE Liaison that genuine efforts have been made to achieve the DBE goal. The requirements for demonstrating "good faith efforts" are set forth as follows:

1. Written notices to DBEs contacted by the bidder/proposer for specific scopes of work identified by the bidder/proposer for subcontracting opportunities not less than five (5) business days prior to bid due date. Such notices shall include information on the plans, specifications and scope of work, including the deadline for submission of interest in teaming;

2. Attendance at a pre-bid conference, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals.
4. For those DBES responding affirmatively in writing to the notice required by Item 1 above,
 - (a) reasons why agreements were not reached, including written explanation for rejection of bids.
5. Efforts to assist DBE contractors with bonding, insurance, and financing, where appropriate.
6. A bidder/proposer shall commit to the minimum percentage of DBE utilization as submitted with its bid/proposal on this contract. During the term of this contract, any unjustified failure to comply with the level of DBE participation identified in the bid/proposal shall be considered a material breach of contract.
7. If the bidder/proposer is a certified DBE and the DBE bidder/proposer intends to perform a portion of the work with its own work force, the DBE bidder/proposer must identify the work specifically by type and dollar value and must perform the work indicated with its own work forces in order to have that work counted toward the goal. (Even though the bidder/proposer is a certified DBE does not relieve the DBE bidder/proposer of the responsibility to make good faith efforts.)
8. In addition, all bidders/proposers will be required to submit the following information with the bid:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform
 - (c) The dollar amount of the participation of each DBE firm participating;
 - (d) Written documentation of the bidder's/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - (e) Written confirmation from the DBE that it is participating in the contract as provided in the bidder's/proposer's commitment.

EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a bidder/proposer will be evaluated by the DBE Liaison to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions, which the DBE Liaison may consider as part of the bidder's/proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate “Good Faith Efforts” are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre- proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested DBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime contractor failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the prime contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.

7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a bidder/proposer has made good faith efforts, the DBE Liaison may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, the DBE Liaison may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

RECONSIDERATION MECHANISM

The City DBE Liaison will evaluate the “good faith efforts” of a firm. If after reviewing the good faith efforts submitted by Bidder/Proposer, the DBE Liaison determines that the Bidder/Proposer has failed to adequately document its good faith efforts, then the Bidder/Proposer shall have the opportunity to provide written documentation or argument, to the City, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the City to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the City.

The City may determine that the efforts of the Bidder/Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the City determines that the Bidder/Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Texas Department of Transportation.

COMPLIANCE

If a bidder/proposer is awarded a contract:

1. The bidder/proposer must not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City's prior written consent. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the bidder/proposer must notify the City immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

2. The Bidder/Proposer will be required to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Bidder/Proposer will be required to obtain the DBE Liaison's prior approval of the substitute DBE, through the submittal of Change of Subcontractors/Suppliers and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Bidder/Proposer fails or refuses to comply in the time specified, our office may issue a termination for default.

PROMPT PAYMENT

The Prime Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its subcontract **no later than 10 days** from the date that the prime contractor has been paid by the City for invoices submitted for performance of subcontractor's work. A delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of New Braunfels. This clause applies to both DBE and non- DBE subcontractors.

To Apply for DBE Certification, please contact the South-Central Texas Regional Certification Agency (SCTRCA) at (210) 227-4722 or www.sctrca.org.

EXHIBIT C **DRAFT CONTRACT FOR PROFESSIONAL SERVICES**

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

WHEREAS, 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 the successful completion of the project as further defined in Exhibit C: Completion Schedule.

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

The City of New Braunfels is seeking a Statement of Qualifications (SOQ) from qualified engineering firms to provide professional traffic engineering services for the On-Call Citywide Traffic Signal Optimization Project.

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

C. Neither CITY'S review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver if any rights under this Agreement or if any cause of action arising out of the performance of this Agreement, and 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 Payment Schedule attached hereto and incorporated herein as Exhibit "B". The contract amount specified shall not exceed [AGREGATE COST]. All estimated fees set forth in Exhibit "B" shall be billed on an hourly not to exceed basis. In the event, the full estimated fee amount in Exhibit "B" is not required to complete a specific task, the ENGINEER shall not bill the remaining balance, resulting in savings to the CITY. The contract amount specified in Exhibit "B" shall not be exceeded without written permission of the CITY.

B. CITY shall reimburse PROFESSIONAL for subcontracting expenses limited to actual pre-approved expenses, and expenses shall not be marked up by PROFESSIONAL more than ten percent (10%).

C. CITY shall reimburse PROFESSIONAL for actual, external costs and expenses reasonably incurred by PROFESSIONAL's employees in performing Services without mark-up by the PROFESSIONAL as detailed in Exhibit B Pricing.

D. Labor Rates. Labor rates shall be based upon bill rates defined by skill level as agreed between CITY and PROFESSIONAL in this Agreement, pursuant to Exhibit B to this Agreement, Labor Rates and subject to revision pursuant to Article III (e). Bill rate ranges for any one skill level are not permissible. PROFESSIONAL shall provide to CITY the components of the labor bill rates, namely salary rate, overhead multiplier and profit multiplier if requested.

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 as described in the Completion Schedule, attached hereto as Exhibit "C", and hereby made a part of this Agreement.

B. In the event PROFESSIONAL'S performance of this Agreement is delayed or interfered with by acts of the CITY or others, 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 (latest version) or fully compatible with Word. 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-INFRINGEMENT 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-INFRINGEMENT 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 Manager. 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:
TITLE:
ADDRESS:
EMAIL:
PHONE:

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, 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 sub-contractor work invoiced.
5. Payment terms are Net 30 Days.
6. Project Close Out and Final Payment:
 - a) Consultant's final billing shall indicate on its face: "Final Bill – No Additional compensation is Due to Consultant".
 - b) City may withhold compensation to such extent as may be necessary, in city's opinion, to protect City from damage or loss for which Consultant is responsible due to:
 - i. Delay in the performance of Consultant's Work;
 - ii. Third-party claims filed, or reasonable evidence received indicating a probable filing of such claims, unless security acceptable to City is provided by Consultant;
 - iii. Failure of Consultant to make payments properly to Sub-Consultants, suppliers and/or vendors for supplied services, labor, materials or equipment for this project;

- iv. Reasonable evidence that Consultant's Work cannot be completed for the unpaid balance amount under this project agreement;
- v. Damage to City; or
- vi. Persistent failure by Consultant to carry out the performance of its services in accordance with this agreement.

c) When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made by City within a reasonable time. City shall not be deemed in default by reason of withhold compensation to Consultant, as provided for in this Article XVI.

- i. In the event of any dispute(s) between the parties, regarding the amount properly compensable for any Phase, as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such claim. In the event Consultant does not initiate and follow the claim procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Consultant.
- ii. City shall make final compensation of all sums due Consultant not later than thirty (30) days after Consultant's execution and delivery of a mathematically correct and accepted final Pay Application.
- iii. Acceptance of final compensation by Consultant shall constitute a waiver of all claims except those previously made in writing and identified by Consultant as unsettled at the time of Consultant's submittal of its final application for compensation.
- iv. Consultant agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services, unless a dispute regarding the Project or Consultant's Work is ongoing. If any dispute exists, upon notice from City, Consultant shall retain its books, payrolls and records for more than four (4) years after completion of all Services performed herein and for as long after four (4) years as City may request. At all reasonable times, Consultant shall provide access to City and City's duly authorized representatives to all personnel of Consultant, all books, payrolls and records of Consultant and City shall have the right to audit same.

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 Article shall be performed at the place of delivery specified in the individual 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.

XI. 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.

D. This contract is subsidized with federal aviation funds. The PROFESSIONAL must have a full understanding of the documents required by Federal Highway Administration (FHWA) and the Texas Department of Transportation (TxDOT) and the Alamo Area Metropolitan Planning Organization (AAMPO), Federal requirements of 23 CFR 172.9 (c) and Chapter 2254 of the Government Code, Title 10, Subchapter A, Professional Services, as condition to receiving these funds. Applicable Federal clauses are set forth in Exhibit F - Federally Required Contract Provisions.

E. The Engineer shall comply with the provisions of Exhibit D, “Special Provision Contractor Contractual Requirements and Title VI Assurances” attached hereto and made a part of this Agreement.

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.

CONTRACTOR SHALL PROVIDE ALL TOOLS AND EQUIPMENT ASSOCIATED WITH WORKER SAFETY AND HEALTH, NEEDED TO PERFORM THE WORK, INCLUDING WITHOUT LIMITATION AIR MONITORING EQUIPMENT, CONFINED SPACE EQUIPMENT, PERSONAL PROTECTIVE EQUIPMENT, WARNINGS, BARRICADES AND

LOCK OUT/TAG OUT EQUIPMENT. PROFESSIONAL shall cooperate with CITY and others working at or near the Site. CITY has no obligation to lend CITY Equipment to PROFESSIONAL and may decline to do so at any time in its sole discretion.

F. 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.

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

H. 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. RECORDS AND RIGHT TO AUDIT

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

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.

XXVII. 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.

XXXIII. 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. TEXAS GOVERNMENT CODE §2270.002

Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"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.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of New Braunfels, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If affirmation is found to be false, City may terminate the contract for material breach.

XXXVIII. 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

BY: _____
Robert Camareno

TITLE: CITY MANAGER

DATE: _____

ADDRESS:
550 Landa Street
New Braunfels, TX 78130

PROFESSIONAL
[NAME OF FIRM]

BY: _____
[AUTHORIZED SIGNER]

TITLE: [TITLE]

DATE: _____

ADDRESS:
[XXX]
[XXXX]

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT SCHEDULE

“Labor Hour Projection” and “Schedule of Hourly Fees”

EXHIBIT C

COMPLETION SCHEDULE

EXHIBIT D

CERTIFICATE OF INSURANCE

(INSERT COI HERE)

EXHIBIT E

FEDERAL CERTIFICATIONS

(RECEIVED WITH RESPONSE AND ANY OTHER REQUIRED CERTIFICATION)

- ATTACHMENT A – COMPANY INFORMATION
- ATTACHMENT B – VENDOR CERTIFICATIONS
- ATTACHMENT C - RECEIPT OF FEDERAL CLAUSES
- ATTACHMENT D – DBE – PART 1 – REQUIREMENTS
- ATTACHMENT D – DBE – PART 2 - CONTRACTOR'S LETTER OF INTENT
- ATTACHMENT D – DBE - PART 3 – PARTICIPATION GOALS (Post Award)
- ATTACHMENT E – CERTIFICATION AND RESTRICTIONS ON LOBBYING
- ATTACHMENT F – DEBARMENT AND SUSPENSION CERTIFICATION
- ATTACHMENT G – CONFLICT OF INTEREST STATEMENT
- ATTACHMENT H - 1295 FORM

EXHIBIT F

FEDERAL CONTRACT PROVISIONS

172.9 (c) Contract Provisions

- 1) All contracts and subcontracts shall include the following provisions, as applicable:
 - i. Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
 - ii. Notice of contracting agency requirements and regulations pertaining to reporting;
 - iii. Contracting agency requirements and regulations pertaining to copyrights and rights in data;
Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
 - iv. Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;
 - v. Standard DOT Title VI Assurances (DOT Order 1050.2);
 - vi. Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);
 - vii. Prompt pay requirements, as specified in 49 CFR 26.29;
 - viii. Determination of allowable costs in accordance with the Federal cost principles;
 - ix. Contracting agency requirements pertaining to consultant errors and omissions;
 - x. Contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of this part; and
 - xi. A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.
- 2) All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR part 20.

172.9 (d) Contract administration and monitoring —

- 1) *Responsible charge.* A full-time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, as specified in § 172.7(b)(5), or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the contracting agency shall designate a public employee as being in responsible charge. A public employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities. The term responsible charge is intended to be applied only in the context defined within this regulation. It may or may not correspond to its usage in State laws regulating the licensure and/or conduct of professional engineers. The public employee's responsibilities shall include:
 - i) Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;
 - ii) Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
 - iii) Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
 - iv) Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
 - v) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
 - vi) Evaluating and participating in decisions for contract modifications; and
 - vii) Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.
- 2) *Performance evaluation.* The contracting agency shall prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely

completion of work, adherence to contract scope and budget, and quality of the work conducted. The contracting agency shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. The contracting agency should prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations should be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

172.9 (e) Contract modification.

- 1) Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions e
- 2) A contract modification shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and be in compliance with the terms and conditions of the contract and original procurement.
- 3) A contracting agency shall negotiate contract modifications following the same procedures as the negotiation of the original contract.
- 4) A contracting agency may add to a contract only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made.
- 5) For any additional engineering and design related services outside of the scope of work established in the original request for proposal, a contracting agency shall:
 - e. Procure the services under a new solicitation;
 - f. Perform the work itself using contracting agency staff; or
 - g. Use a different, existing contract under which the services would be within the scope of work.
- 6) Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost-plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost-plus fixed fee or lump sum reimbursed contracts.

EXHIBIT G

**CODE OF FEDERAL REGULATIONS
23 CFR 172.9 (c)**

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-B/part-172>

TEXAS GOVERNMENT CODE 2254

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2254.htm>

STANDARD DOT TITLE VI ASSURANCE (DOT ORDER 1050.2)

<https://www.in.gov/indot/files/Standard-USDOT-Assurances.pdf>

END OF DOCUMENT

APPENDIX ONE

CODE OF FEDERAL REGULATIONS 23 CFR 172.9(c)

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-B/part-172>

43 TAC CHAPTER 9, SUBCHAPTER C [Home - Rules & Meetings](#)

TEXAS GOVERNMENT CODE 2254

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2254.htm>

STANDARD DOT TITLE VI ASSURANCE (DOT ORDER 1050.2)

<https://www.in.gov/indot/files/Standard-USDOT-Assurances.pdf>