



SOLICITATION AND OFFER

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

Solicitation Number: RFQ 21-013

**Request for Qualifications - IDIQ for
Professional Services, City of New Braunfels, TX**

- Invitation for Bid (IFB)
 Request for Qualifications (RFQ)

Date Issued:

April 15, 2021

SOLICITATION

Respondents must submit sealed Statement of Qualifications (SOQ) containing one (1) signed original hardcopy and one (1) in electronic format (USB). Electronic response submissions through BidNet Direct does not require an original hardcopy and USB to be submitted. Questions concerning RFQ must be received, by email only, prior to 5:00P.M. CT on **April 30, 2021**. Qualifications will be received at the Office of the City Secretary at the address shown above until: **3:00 P.M. (CT), May 13, 2021**. There will be no public bid opening. Qualifications received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:
(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

Debbie Kimball,
Contract Administrator

Email: DKimball@nbtexas.org
Phone: (830) 221-4081
Fax: (830) 608-2112

- 5% Proposal Bond Required: YES NO
100% Payment Bond Required: YES NO
100% Performance Bond Required: YES NO

OFFER

(This portion must be fully completed by Proposer.)

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

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

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

1) Respondent's State of Residence: _____

Name
and
Address
of Respondent:

Name and Title of Person Authorized to Sign Offer:

E-Mail Address:

Phone Number:

Fax Number:

Signature:

Date:

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

(Applies to Request for Qualifications only)

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**SECTION 3
PROJECT DESCRIPTION AND SCOPE OF WORK**

3.1 DEFINITIONS

3.1.1 City of New Braunfels (City)

Any reference to City shall mean the City of New Braunfels, Texas.

3.1.2 Firm, Respondent, Vendor

Any references to above shall relate to the Company submitting a Statement of Qualifications (SOQ) to the City for award consideration.

3.1.3 Indefinite Delivery / Indefinite Quantity (IDIQ)

Indefinite delivery/indefinite quantity (IDIQ) is a type of contract wherein identified firms will provide on-call, as needed, professional and consulting services to the City.

3.1.3 Request for Qualifications (RFQ)

This Request for Qualifications (RFQ) is an invitation for individuals and companies to submit their Statements of Qualifications (SOQs) only for City consideration. Your SOQ may also be referenced as your Proposal.

Request for Qualifications (RFQ) is referencing this solicitation.

3.1.4 Statement of Qualifications (SOQ)

The submittal of a Statement of Qualifications (SOQ) by a firm or individual is an indication of the ability of the firm or individual to perform the requested services. The SOQ, or Proposal, is your response to this RFQ.

For purposes of this contract, a firm's statement of qualifications (SOQ) will be submitted to the City in several ways:

- A firm will initially submit their statement of qualifications, for any identified category in their Proposal the firm is submitting for the City's consideration to become a designated prequalified firm by the City.
- A prequalified firm, within a specific category, may be asked to provide a more detailed project specific statement of qualifications on a City issued task order. The firm has the option to not participate on a task order at any time, without negative impact as a prequalified firm with the City. Not all task orders released by the City may be a "fit" for your firm.

3.1.5 Prequalified Firm

For purposes of this solicitation, a prequalified firm is a firm identified, by category, by the City on their IDIQ prequalified firm list as an available firm to perform the services within that category. City staff can utilize the firm's services in the designated prequalified categories on an on-call, as-needed basis during the contract term. A firm will not be considered for work on any category on which the firm has not been prequalified. The IDIQ categories are listed on Attachment A Categories Form of this solicitation.

3.1.6 IDIQ Categories

Specified services have been identified by key City staff as potential future professional and consulting services needed on an on-call, as-needed basis on this contract. These services have been broken down into specific “categories” and are listed under 3.5 below and in Attachment A Categories Form.

3.1.7 Professional Services Agreement (PSA)

A Professional Services Agreement (PSA) will constitute as a “contract” when a project has been assigned to a prequalified firm by the City.

3.1.8 Purchase Order

A purchase order represents the City’s financial obligation to pay a firm for services rendered in accordance with their PSA issued by the City. The purchase order number should be referenced on any invoices submitted by a firm for payment purposes.

3.1.9 Professional and Consulting Services

The City is utilizing the definition of professional and consulting services as listed in the Texas Government Code, Title 10, General Government, subtitle F. State and Local Contracts and Fund Management, Chapter 2254. Professional and Consulting Services. Additionally, at the City’s discretion, other professional and consulting services not defined by Texas Government Code 2254 have been added to this solicitation (refer to 3.7 below and Attachment A Categories Form).

Professional Services within the scope of practice, who is licensed or registered by the State, as:

- ❖ Architect (Texas Architecture Practice Act)
- ❖ Professional Engineer (Texas Professional Engineering Practice Act)
- ❖ Land Surveyor
- ❖ Landscape Architecture
- ❖ Real Estate Appraising
- ❖ *Certified Public Accountant – Not included in this solicitation*
- ❖ *Medical – Not included in this solicitation
Physician, including a surgeon)*
- ❖ *Optometrist – Not included in this solicitation*
- ❖ *Registered Nurse – Not included in this solicitation*

3.2 BACKGROUND

The City of New Braunfels currently has an Indefinite Delivery Indefinite Quantity (IDIQ) prequalified list of firms to provide on-call, as needed, professional and consulting services. The City’s current list of prequalified firms will be expiring on July 31, 2021; therefore, services are being resolicited at this time.

3.3 DESCRIPTION OF PROJECT

The City of New Braunfels is seeking Statements of Qualifications from qualified firms interested in providing on-call, as-needed professional and consulting services, on various future City projects. This RFQ will allow the City to build an IDIQ list of “prequalified” professionals that we can pull from for future projects as a need is identified.

Due to the possibility of multiple project service being needed simultaneously, the City will multiple award firms within each identified category listed in Attachment A – Categories Form. Firms will

be prequalified, by category and added to our IDIQ prequalified firm list established through this RFQ. Only firms listed on our IDIQ prequalified firm list will be considered for future on-call, as-needed services, within their prequalified categories. A firm will only be eligible for project consideration within their prequalified categories.

Various City departments and/or Project Managers may utilize the services provided with the listed firms on individual projects with combined disciplines using the task order process as needed.

3.4 SCOPE OF WORK

When the City has identified a need for professional or consulting services, the City will utilize the IDIQ prequalified firm list, which is subdivided by categories. City staff will determine what specific category or categories will best fit their project needs.

3.4.1 Assignment of Work

Selection Processes

The City anticipates a wide range of services that may be used under this solicitation. Some job assignments may be relatively small and entail an hour or two of consultation. Others might be more detailed or lengthy such as the design of a small construction project.

The selection method of firm assignment of work will be determined by City staff and/or project manager, by project. The estimated cost of the project will be one of the driving forces on the assignment of work. There is not a pre-determined amount that starts the Task Order Process.

A. Small Projects

For small jobs the City may reach out to a prequalified firm directly from the IDIQ prequalified firm list for services to be performed.

B. Task Order Process

For more costly and complex projects, or if unknown project factors exist, the City may utilize the task order process to solicit all prequalified firms listed in identified needed specific category or categories to receive their project specific detailed statement of qualifications.

The City will determine which applicable prequalified category or categories will be utilized on the task order for the project. All prequalified firms in that category or categories will receive a copy of our issued Task Order. The City's task order may include, but not be limited to, the following information for firm's consideration:

- a brief description on the background and purpose for the task order;
- submittal deadline for task order;
- the City's expectations and duties to be performed by the firm, which may cause the firm to include in their task order response:
 - Resumes;
 - Team assigned to project;
 - Graphs;
 - Reports;
 - Plans;
 - Outreach duties;
 - Project timelines to complete the job;
- the City's estimated timeline for project completion and duration of contract term (i.e., one project or if task order will cover multiple projects, or multiple years)
- evaluation criteria to be utilized by the City for firm selection

The City will review and evaluate all firm responses received on the task order and rank the proposals. At the City's discretion, firms may be interviewed and/or presentations may be requested from top ranked proposers, if deemed in the best interest of the City. When the evaluation committee has determined their top ranked firm, an award recommendation is made by the committee and the City project manager will reach out to the top ranked firm to discuss the project's scope of work in more detail, if necessary, and then request the firm's payment schedule to perform the project services. If negotiations fail, the City reserves the right to negotiate with the next highest ranked firm or cancel the task order in its entirety.

C. Professional Services Agreement (PSA)

Regardless of selection method on each project, the selected firm will be required to provide the City Project Manager with a written scope of work (PSA Exhibit A), payment schedule and fee (PSA Exhibit B) and completion schedule (PSA Exhibit C). All of these documents will become a part of the PSA. The selected firm will receive a PSA and purchase order on the project.

City Council approval may be required prior to a project assignment dependent on the dollar value and/or length of service to be performed on the project.

Project assignments are not finalized until City Council approval has been received, as applicable, and the City Manager has signed the firm's PSA.

D. Purchase Order

Each project assigned will have a purchase order issued, along with a PSA. The purchase order number must be referenced on your submitted invoices to the City for payment purposes.

E. The City's project manager will contact the firm to commence work on the City assigned project after PSA and purchase order has been issued and all requested documents from firm have been received by the City.

No work is guaranteed by being selected as an IDIQ prequalified firm through this solicitation.

3.5 CATEGORIES FOR PROFESSIONAL AND CONSULTING SERVICES

3.5.1 The City is requesting the following categories of "Professional Services" as defined by Texas Government Code, Chapter 2254:

- Roadway Schematic Planning and Design
- Bridge Planning, Design and Inspections
- Dam and Levee Design, Inspection, Regulatory Compliance and Permitting
- Structural Engineering Analysis and Design
- Architectural Planning and Design
- Electrical Engineering and Lighting Study, Analysis and Design
- Utility Engineering, Analysis and Design
 - Water
 - Wastewater
- Subsurface Utility Engineering (SUE), Utility Coordination

- Plan & Development Reviews
 - Engineering Development Plan Reviews
 - Building Permit Plan Reviews
 - Development Process Reviews
 - Permit Application Reviews
- Traffic Engineering
 - Traffic Engineering Studies and Impact Analyses
 - Traffic Signal Design and Timing
 - Signing, Marking and Traffic Control Plans
 - Intersection Analysis and Design
 - Intelligent Transportation Systems Planning and Design
 - Parking Planning, Analysis and Design
- Transportation Planning
 - Local and Regional Thoroughfare Planning
 - Corridor Alignment and Development Studies
 - Bicycle and Pedestrian Planning and Design
 - Streetscape Planning and Design
- Roadway Impact Fee and Proportionality Studies
- Transit Consulting Services
- Railroad Crossing and Quiet Zone Planning, Design, Regulatory Compliance and Permitting
- Construction Management & Inspection
 - Project Management
 - On-site Representation
 - Construction Inspection
- Public Works (Roadway and Stormwater) Construction Inspection
- Environmental Clearance, Compliance, Remediation, Permitting and Planning
- Archaeology and Cultural Resources Clearance, Compliance and Permitting
- Building Commissioning
- Facility and Property Assessment
- Registered Accessibility Specialist Plan Review and Inspection Services
- Geotechnical Engineering and Investigation
- Material Testing Services
- Public Involvement Services (Public Engagement and Facilitation)
- Landscape Architecture Planning and Design
- Stormwater Engineering
 - Stormwater Drainage Area Assessments and Studies
 - Stormwater Infrastructure Planning and Design
 - Low-impact Development and Water Quality Controls Planning and Design
 - Stormwater Utility Fee Support
 - Floodplain Modeling and Remapping
 - FEMA Letters of Map Change
 - Flood Mitigation and Warning Systems
 - NFIP Community Rating System Management
- Land Surveying and Plat Preparation
- Comprehensive Planning
 - Master Planning Services for Redevelopment of Publicly Owned Property
 - Community Needs Assessments
 - Land Use Planning
- Cost Estimating Services, Constructability Review and Value Engineering Analysis

- Municipal Solid Waste Study, Analysis and Design
- Real Estate Appraiser
- Other Professional Service: _____

3.5.2 Other Professional Services / Consulting Services

The City is requesting the following categories of “Other” Professional Services and/or Consulting Services” not specifically listed in Texas Government Code 2254 are defined as services of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

The City is requesting the following OTHER Professional and/or Consulting Services categories not defined by Texas Government Code, Chapter 2254:

- Consulting and/or Administration for TxDOT Related Projects
- Branding, Marketing
- Economic Impact Assessments
- Other General Consulting Service: _____

The above lists are intended to enhance the statement of work and is not intended to limit the respondent’s description of the project’s process or services provided.

SECTION 4

REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

4.1 AVAILABLE DOCUMENTS

Solicitation documents may be obtained from:

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

4.2 PROPOSED SOLICITATION SCHEDULE

DATE	MILESTONE
April 15, 2021	RFQ issued on https://www.bidnetdirect.com/texas/city-of-new-braunfels and http://www.nbtexas.org/2694/Active-Solicitations
April 30, 2021	Deadline to receive questions shall be 5:00 P.M. CT
May 13, 2021	Statement of Qualifications submission deadline is 3:00 PM CT
June/July, 2021	City Council considers award of qualifications

4.3 SUBMISSION OF PROPOSALS

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

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

If submitting an electronic response to this solicitation through BidNet, an original hardcopy and USB will not be required.

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

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

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

“RFQ 21-011 Request for Qualifications for IDIQ for Professional Services, City of New Braunfels, Texas Proposal Due Date: May 13, 2021, 3:00 P.M. CT”

It is the sole responsibility of the respondent to ensure timely delivery of the Proposal. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the respondent. **PROPOSALS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE ACCEPTED OR CONSIDERED.**

- (c) The Proposal shall contain evidence of Proposer’s authority and qualification to do business in the State where the Project is located, or Proposer shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Proposal. Proposer’s state Contractor license number, if any, shall also be shown on the Proposal Form.
- (d) An authorized official of the firm must print or type their name and **MANUALLY SIGN THE ORIGINAL PROPOSAL, AND USB COPY MUST REFLECT THE SAME SIGNATURE.**
- (e) Proposals may not be withdrawn after the time set for the closing, unless approved by the City.
- (f) Your offer or a modification to your offer is LATE if received after the time set for Proposal opening and will not be considered.
- (g) If you need clarification or have any question as to the true meaning of specifications or any other document in the solicitation, your concerns must be submitted in writing to the City’s Purchasing Representative, via email only, on or before seven (7) calendar days prior to scheduled opening of Proposals. Late requests will not be honored. Timely requests will be interpreted or otherwise clarified by issuance of an addendum to the solicitation distributed to all sources that received a set of the solicitation. No other interpretations or clarifications will be provided prior to award.
- (h) Prompt payment discounts **WILL NOT BE CONSIDERED** in determining low Proposal and making award, if applicable to this RFQ. Prompt Payment Discounts offered by Proposer, and earned by the City, will be taken. When computing the DISCOUNT PERIOD for payments, time will begin upon satisfactory delivery of goods and/or submission of acceptable invoice, whichever is later. Partial payments will not be made unless specifically requested and approved by City prior to award of contract.
- (i) The following items request information that the Evaluation Committee will utilize to evaluate the Proposal. Failure to provide any of the information below may result in a Proposal being deemed non-responsive and therefore not considered in the selection process.

A firm wishing to be considered for award consideration is requested to submit on the firm’s letterhead, a statement which provides information on the following points, numbered and headed as indicated. The statements that follow request information that the Evaluation Committee will use to evaluate the RFQ. Should you opt not to follow the suggested outline, it may result in the SOQ being considered non-responsive and therefore not considered in the selection process.

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that Proposals be submitted with **one (1) original master (marked ‘original’), and one signed USB electronic copy of all documents listed below. If submitting an electronic response to this solicitation through BidNet, an original hardcopy and USB will not be required.**

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

- **TAB 1 Solicitation and Offer Form**: Complete and sign form located on Page 1.
Failure to include a signed copy of the Solicitation Offer will result in the removal of the SOQ from consideration.

- **TAB 2 Acknowledgment of any Addendum issued on this solicitation**, if applicable.
- **TAB 3 Statement of Interest** – (please limit response to one (1) page and minimum 10-pt font) Concisely state your understanding of the services requires and any other information Respondent would like to highlight about their firm. Include the number of years Respondent team has been in business, and Respondent's office address.

- **TAB 4**

FIRM'S GENERAL QUALIFICATIONS

Your firm's overall Qualifications being submitted for City's review and consideration. Qualifications should represent the disciplines that support the categories you want to be considered for through this RFQ. **Your overall qualifications should be limited to Two (2) single-sided pages and minimum 10-pt font.**

- **TAB 5**

The first item under TAB 5 should be your **Attachment A CATEGORIES FORM** with all Respondent's categories marked for the City's review and award consideration.

Format for **EACH CATEGORY** the Respondent is requesting City's review and award consideration, as follows:

- a. **RELEVANT BACKGROUND EXPERIENCE**: The Statement of Qualifications (SOQ) should enable the evaluation committee to make a thorough evaluation and arrive at a sound determination that the firm is most qualified to support the category being requested for consideration.
 - The CATEGORY AND NAME OF FIRM must be displayed at the top of page 1.
 - The firm's Relevant Background Experience for **EACH** category **must be limited to two (2) single-sided pages and minimum 10-pt font.**
- b. **EXPERIENCE & PREVIOUS PERFORMANCE with the City of New Braunfels and surrounding areas.** **EACH** category **must be limited to two (2) single-sided pages and minimum 10-pt font.**

List any project experience your firm has had with the City of New Braunfels as a Prime Firm. The City will consider the history of the firm in complying with programs, projects, schedules, and/or budgets on previous City of New Braunfels projects. Please provide a list all projects completed for the City of New Braunfels within the last 5 years. Points will be deducted if the City has had a negative experience with the firm on City projects.

The City will also consider the firm's experience and performance with New Braunfels issues, as may be evidenced by work in New Braunfels and/or the surrounding area during the past five (5) years. *The surrounding area is defined as the San Antonio/Austin corridor area.*

Briefly describe experience in the following areas and reference projects relating to that experience as applicable for each category:

- City of New Braunfels area development and/or project requirements.
 - Local area construction in the public (City, State, etc.) right-of-way.
 - Local area construction costs and practices.
 - Local environmental community, conditions and constraints.
 - Firm's experience with private and public utilities within the New Braunfels or surrounding area.
 - Building code requirements; and City of New Braunfels Design Criteria.
 - Responsiveness due to proximity of projects to local area office.
 - Local area historical, civic and cultural values.
 - Public awareness and involvement in projects development in the Local area.
- c. **TECHNICAL QUALIFICATIONS:** The SOQ must be so specific, detailed and complete as to clearly and fully demonstrate that the Proposer has a thorough knowledge and understanding of the requirements and has valid and practical solutions for technical problems.
- The CATEGORY AND NAME OF FIRM must be displayed at the top of page 1.
 - The firm's Technical Qualifications for **EACH** category **must be limited to two (2) single-sided pages and minimum 10-pt font).**
- d. **REFERENCES PER CATEGORY:** Provide three (3) references for work performed in the discipline that support each category you want to be considered for by the City.

Contract Assignment Sheets

- The respondent shall demonstrate past performance related to the category/discipline being submitted for City's consideration. The offeror shall provide a minimum of three (3) contract references. Contact information for client references must be current.
- The referenced contracts shall be representative of the category/disciplines being submitted for City's consideration. The following information shall be included for each contract:
 - Current point of contact for the client;
 - Telephone number;
 - Email address if available;
 - Summary of the work performed;
 - Contract term

The references per Category **must be limited to one (1) single-sided page and minimum 10-pt font.**

- **TAB 6: ORGANIZATIONAL CHART AND RESUMES**
 - Each resume should be limited to **one (1) single-sided page and minimum of 10-pt font.**

• **TAB 7: OTHER SUPPORT AND ATTACHMENTS**

- Attachment B -Company Information
- Attachment C – Respondent's Certifications
Failure to submit Attachments B and C will deem your proposal non-responsive.
- Attach copies of licenses, certifications, or any other documentation not referenced under another tab you wish to submit for City's consideration.
- Conflict of Interest Questionnaire (per Section 7.22) Must be filed with the City Secretary IF the firm has a business relationship as defined by Section 176.001(1-a) with the City and the firm meets requirements under Section 176.006(a).
- Certificate of Interested Parties - Form 1295 (per Section 7.23) This form is not required at time of SOQ submittal, but will be required from any firm awarded a City project greater than \$25,000. Firms can submit form with SOQ submittal.
- Proof of Insurance: **A "for information purposes only" copy is acceptable.** Provide evidence of professional liability for errors and omissions coverage, and other fiduciary coverage policy with a minimum limit of \$1,000,000; include the name and address of the coverage provider and a copy of proof of coverage. **Any firm awarded a subsequent City project from this RFQ will be required to provide Proof of Insurance prior to work commencing (per Section 7.3).**

- **TAB 8: DEVIATIONS FROM REQUEST FOR QUALIFICATIONS:** Proposer is to indicate any deviations being offered in lieu of specified language referenced in the solicitation. Each deviation should be clearly identified as listed within the RFQ for cross reference purposes. The terms may be negotiated as part of the negotiation process with the exception of contract provisions that are non-negotiable. Final approval and acceptance of deviations will be at the discretion of the City.

4.4 CONTACT FOR QUESTIONS

All *questions* concerning this solicitation shall be in writing, on or before **April 8, 2021**, to:
Purchasing Representative: Debbie Kimball, Purchasing Buyer, via email dkimball@nbtexas.org. **All questions and/or clarification submittals shall identify the RFQ in the subject line of the email message as follows:**

Questions – **RFQ 21-013 Request for Qualifications for Professional Services, City of New Braunfels, Texas**

When submitting questions, refer to Section and Page Number of RFQ.

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

4.5 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 at:

BidNet Direct: <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and the City's website: <http://www.nbtexas.org/2694/Active-Solicitations>

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

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

Respondents shall be responsible for monitoring the above referenced websites for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancelations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

4.6 EXCEPTIONS AND DEVIATIONS

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

4.7 COMPETITIVE STATEMENT OF QUALIFICATIONS PROPOSALS

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

4.8 WHAT IS NOT ACCEPTED

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

SECTION 5

PAYMENT SCHEDULE & FEES

5.1 PAYMENT SCHEDULE & FEES

Various City departments and/or Project Managers may utilize the services provided with the listed firms on individual projects with combined disciplines using the task order process as needed.

When a firm is selected for a project assignment by the City of New Braunfels, the firm will have submitted a detailed project Scope of Work, Payment Schedule & Fee and Completion Schedule to the assigned City project manager.

The firm will be notified if the Fee requires prior approval from the New Braunfels City Council. Project assignments are not finalized until City Council approval has been received, as applicable, and the City Manager has signed the firm's PSA.

The Payment Schedule & Fees will serve as Exhibit B to the City issued Professional Services Agreement (PSA) on the project assigned. Refer to Attachment D Sample Professional Services Agreement of this RFQ for further details.

No work is guaranteed by being selected as an IDIQ prequalified firm through this solicitation.

SECTION 6

EVALUATION CRITERIA INFORMATION

6.1 SELECTION PROCESS

- 6.1.1** Upon receipt of written statement of qualifications for professional services from Respondents, the City will evaluate and rank Firms meeting the evaluation criteria, per category submitted, in accordance with the evaluation criteria listed below and in accordance with requirements of Section 4.3 Submission of Proposal.

The category services solicited will be at the discretion of the City, on an on-call, as needed basis. Firms prequalified by category will be listed on the City's IDIQ prequalified firm list established through this RFQ. Our internal users will solicit for services from this list, by category.

- 6.1.2** Professional services will be procured in accordance with Chapter 2254 of the Government Code, Title 10, Subchapter A, Professional Services.

Selection of the most highly qualified respondents will be made based on demonstrated competence and qualifications based on the Statement of Qualifications submitted by firms in response to this RFQ.

- 6.1.3** This solicitation does not constitute a commitment by the City to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related-work by any the submitter.

The City reserves the right to waive responses to any part of this request if, in its sole judgment, it determines that it is in the best interests of the City to do so. The City reserves the right to vary or waive requirements for different submitters as deemed in the best interest of the City. The City may require any submitter to participate in negotiations or submit such other information or documentation as it may deem necessary.

- 6.1.4** Refer to Section 3, Scope of Work, 3.4 for further details of work assignments.

6.2 EVALUATION CRITERIA

The City of New Braunfels evaluation committee will review all Statement of Qualifications (SOQs) submitted in response to this RFQ using the criteria presented below and rank each firm, by submitted categories. The evaluation committee's recommendations are subject to approval by the City of New Braunfels City Council.

- 6.2.1** Evaluation Standard; Evaluation Committee. A committee comprised of various City of New Braunfels staff will evaluate the SOQs submitted. SOQs will be evaluated on evidence of understanding of the issues and challenges, the objectives to be achieved, and the technical and administrative capabilities in relation to the needs of the project.

The following criteria shall apply in the evaluation of the SOQ:

EVALUATION CRITERIA:

40 Points: Firm's General Qualifications

The extent to which the firm has available personnel with the necessary relevant background experience and training to perform each category of work.

60 Points: Relevant Experience, Technical Qualifications and Previous Performance

Experience with similar projects, technical qualifications (including resumes) and previous performance with the City of New Braunfels and/or surrounding areas.

TOTAL POSSIBLE POINTS: 100

Firms are being advised that TEN (10) evaluation points will be deducted from their SOQ ranked score if their SOQ submitted exceeds the identified number of acceptable pages listed in this RFQ concerning evaluation criteria as follows:

- **One (1) single-sided page and minimum of 10-pt font for Statement of Interest - submitted once**
- **Two (2) single-sided pages and minimum of 10-pt font for General Company Qualifications – submitted once**
- **Two (2) single-sided pages and minimum of 10-pt font for Relevant Background Experience, submitted per category**
- **Two (2) single-sided pages and minimum of 10-pt font for Technical Experience, submitted per category**
- **Two (2) single-sided pages and minimum of 10-pt font for Previous Experience with the City of New Braunfels and/or surrounding areas, submitted per category**
- **One (1) single-sided page and minimum of 10-pt font for References, submitted per category**
- **One (1) single-sided page and minimum of 10-pt font for each Resume submitted**

6.2.2 For this RFQ, Respondent's Statement of Qualifications will be evaluated and ranked. It is the intent of the City to multi-award each category to ensure availability of firms to provide on-call as-needed professional services. Exact number of awards per category is not known at this time. Until SOQs are received, the City will not know the availability of firms.

6.2.3 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.

6.2.4 References: Contact information for client references must be current. Please include contracts awarded to your company complete with a current point of contact for the client, telephone number, email address if available, summary of the work performed, and a contract term. *Refer to 4.3 Tab 4 and 6.2.1 for further submittal details.*

6.2.5 SOQ Form: Responses of excessive length or complexity are discouraged, and as stated above evaluation points will be deducted from SOQs exceeding the number of pages to be submitted. The City reserves the right to include the selected SOQ, or any part of the selected proposal, in any awarded PSA. Emphasis is on completeness and clarity of content. *Refer to 4.3 Tab 4 and 6.2.1 above for penalty of submitting too lengthy pages on certain documentation.*

6.2.6 Other Considerations: The City reserves the right to request additional information or consider historical information and facts, whether gained from the RFQ, references, or any other

source, in the evaluation process, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent's background, personnel, experience, financial and other references, management practices, exceptions to the RFQ or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.

6.3 LIMITATIONS

6.3.1 Right to Accept or Reject.

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

6.3.2 Solicitation to Remain Subject to Acceptance. All statement of qualifications will remain subject to acceptance for one hundred twenty (120) days after opening without taking action.

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

6.3.4 Firm or Individual's Obligation Regarding Evaluation:

a. Submission of Information. Submitters are cautioned that it is each firm and or individual's sole responsibility to submit information related to the evaluation categories, and the City is under no obligation to solicit such information if it is not included with the SOQ. Failure of a firm or individual to submit such information may cause an adverse impact on the evaluation of the specific SOQ.

b. Submitter Review of RFQ. Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFQ and their responses. Failure to do so will be at the firm and/or individual's risk and will not be a determinative factor when awarding the contract for services.

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

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

6.4 SOQ SPECIFICATIONS

6.4.1 Modification or Withdrawal of Statement of Qualifications.

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

6.4.2 Inquiries.

In order to ensure fair and objective evaluation, all questions related to this RFQ should be addressed only to DKimball@nbtexas.org.

6.4.3 RFQ Interpretation; Addendum.

Any interpretations, corrections, or changes to this RFQ will be made by addenda through:

- BidNet Direct: <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and
- City Website: <http://www.nbtexas.org/2694/Active-Solicitations>

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

SECTION 7

CONTRACT TERMS AND CONDITIONS

7.1 CONTINUOUS IDIQ RECRUITMENT

If the need for additional professional or consulting service categories are identified by the City during the term of this service, the City reserves the right to periodically reopen this Request for Qualifications for the purpose of providing opportunities to firms to become qualified service providers for the City in the newly identified categories. All current prequalified firms will be provided a copy of the new solicitation for their submittal consideration.

The below section will apply to any firm ultimately invited to submit a cost proposal and is assigned a project by the City, confirmed through the issuance of a PSA and purchase order. These terms and conditions are presented for your agreement or your opportunity to take exception. Your response to these terms will be the basis for beginning contract negotiations should your firm be selected to submit a cost proposal on any City Project.

7.2 CITY TERMS AND CONDITIONS

All selected prequalified firms are required to adhere to all terms and conditions as detailed in this RFQ and as listed in Attachment D – Sample Professional Services Agreement. Any deviations to our standard terms and conditions must be submitted with your Proposal and identified in TAB 8.

7.3 INSURANCE AND LIABILITY

Any project assigned to a selected firm wherein work or attendance at meetings will take place on City property, etc., the firm must provide at his expense, insurance with limits not less than those prescribed below. The firm further agrees to indemnify, defend, and hold City of New Braunfels harmless from any and all causes of action arising from this contract. With respect to required insurance, Contractor will:

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

5. Submit a certificate of insurance reflecting coverage as follows:

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

Products/Completed Operations Aggregate	-	\$1,000,000
Each Occurrence	-	\$ 500,000
Personal/Advertising Injury	-	\$ 500,000
Medical Payments (Any One Person)	-	\$ 5,000
Property Damage	-	\$ 100,000
c. <u>Professional Liability Errors and Omissions</u>		
Per Occurrence	-	\$ 300,000
Aggregate	-	\$ 500,000
d. <u>Worker's Compensation</u>	-	As Statutorily required
Employers Liability		
Each Accident	-	\$1,000,000
Policy Limit by Disease	-	\$1,000,000
Each Employee by Disease	-	\$1,000,000

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

7.4 CONTRACT TERM

This contract shall begin **August 1, 2021**, or the begin date specified in contract award, whichever is later, through **July 31, 2024**.

7.5 OPTION TO RENEW

At City’s option, the IDIQ for Professional Services may be renewed under the same terms and conditions for **two (2) additional one (1) year period(s)**. Renewal of IDIQ prequalified firms during option term(s) will be confirmed in writing by the City to each prequalified firm.

7.6 CONTRACT CHANGES

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

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

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

7.7 DESIGNATED CITY HOLIDAYS

No deliveries or services will be required or accepted, unless specific prior arrangements have been made, on designated holidays as per the City’s approved holiday schedule.

<u>2021 HOLIDAYS</u>		
New Year’s Day	Friday	January 1, 2021
Martin Luther King, Jr. Day	Monday	January 18, 2021
President’s Day	Monday	February 15, 2021
New Braunfels Founder’s Day	Friday	April 2, 2021
Memorial Day	Monday	May 31, 2021
Independence Day	Monday	July 5, 2021
Labor Day	Monday	September 6, 2021
September 11 Remembrance Day (Uniform Fire Dept. Personnel Only)	Friday	September 10, 2021
Comal County Fair Day (Excluding Uniform Fire Dept. Personnel)	Friday	September 24, 2021
Thanksgiving Day	Thursday	November 25, 2021
Day after Thanksgiving	Friday	November 26, 2021
Christmas Eve	Friday	December 24, 2021

7.8 AWARD OF PROFESSIONAL SERVICES AGREEMENT (PSA)

Firms are initially prequalified and added to the City’s IDIQ prequalified firm list, broken down by categories. The firm is not awarded a “professional services agreement” “contract” until their firm has been assigned a City project.

Refer to Attachment D to view sample City of New Braunfels’ Professional Services Agreement to be signed by both parties if awarded a contract through this solicitation.

7.9 ELEMENTS OF PSA

Agreement; Exceptions.

- a. Submission of a SOQ is a representation by a submitter that the submitting firm or individual agrees to the terms, conditions, and other provisions contained in the RFQ, unless the submitter clearly and specifically presents in its SOQ any exceptions to the terms, conditions, and other provisions contained in the RFQ.
- b. Exceptions presented in a SOQ are not to be considered incorporated into the agreement between the City and the selected firm or individual unless and until the City agrees to accept such exceptions.
- c. The selected firm must acknowledge and agree that the negotiated agreement resulting from this RFQ includes the terms, conditions, and other provisions contained in the RFQ, the SOQ selected (including any exceptions accepted by the City) which is acceptable to the City and is not in conflict or contravention of the RFQ, and any other documents mutually agreed upon by the City and the selected firm. Said terms and conditions shall be applicable during the entire contract term.

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

7.10 RIGHT TO TERMINATE; NOTICE REQUIREMENT

The City reserves the right to terminate the contract with the selected Firm for any reason or for no reason (without cause) during the term of the contract, or during any renewal, extension or amendment, by giving thirty (30) days written notice of such intention to terminate the contract to the selected submitter. In the event suspension or termination is without cause, payment to the Firm, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by City to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to City.

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

7.11 SELECTED FIRM OBLIGATION TO MAKE REPORTS

The Firm selected and awarded an agreement under this RFQ shall be obligated as follows:

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

7.12 ASSIGNMENT; TRANSFER. The selected Firm shall not sell, assign, transfer, or convey any contract or other benefits resulting from this RFQ, in whole or in part, without the prior written consent of the City Manager. Sale of more than 50% ownership of Firm shall be construed as an assignment.

7.13 FORCE MAJEURE

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

7.14 PAYMENT AND INVOICING REQUIREMENTS

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

ACCOUNTS PAYABLE
550 LANDA STREET
NEW BRAUNFELS, TEXAS 78130
Phone Number: (830) 221-4380

Email Address: AccountingTechnicians@nbtexas.org

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

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

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

7.15 INDEPENDENT CONTRACTOR

The selected Firm will be an independent contractor under the contract. Professional services provided by the selected Firm shall be by the employees or authorized subcontractors of the selected Firm and subject to supervision by the selected Firm, and not as officers, employees or agents of the City.

Selected Firm will be required and agrees to comply with all state and federal employment laws as well as all other federal, state, county and local municipal laws, ordinances, regulations, safety orders, resolutions and building codes, including Americans with Disabilities Act, relating or applicable to services to be performed under any City assigned project.

7.16 SUSTAINED DAMAGES

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

7.17 CONFIDENTIALITY OF DOCUMENTS

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

7.18 SUBCONTRACTING PROPOSAL

The purpose of this RFQ is to establish prime firms to be prequalified for future on-call as-needed professional services.

After prequalified firms have been identified through this RFQ, only IDIQ prequalified firms can be considered as a prime contractor. However, the prequalified firm could engage in a subcontracting arrangement with another prequalified firm or with a non-prequalified firm on a project assignment through a task order. The subcontractor's credentials must be submitted with the firm's proposal in response to the City's Task Order.

7.19 INDEMNIFICATION

7.19.1 INDEMNIFICATION FOR INJURY AND PERFORMANCE

- A. Firm further specifically obligates itself to City in the following respects, to-wit:

The Firm hereby agrees to protect, indemnify and hold harmless the City, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of the Firm, its officers, employees, servants, agents or subcontractors, or anyone else under the Firm'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 Firm shall be obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

- B. The Firm is not responsible for the actions of the Firm's contractor to perform the construction of the improvements covered under this Agreement.
- 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 Firm, 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 Firm, its employees, contractor, agents and consultants.

7.19.2 INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

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

7.19.3 INDEMNIFICATION FOR PERFORMANCE

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

7.20 NON-NEGOTIABLE TERMS

The following terms or conditions are not negotiable:

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

7.21 CONFLICT OF INTEREST QUESTIONNAIRE (Form CIQ)

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

Form CIQ is available from the Texas Ethics Commission by accessing the following web address: <https://www.ethics.state.tx.us/forms/conflict/>

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

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

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

7.22 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

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

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and submit a signed copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor. *Although submittal of this form is not required at the time of SOQ submittal, it will be required from any firm awarded a project greater than \$25,000 by the City.*

7.23 INTERLOCAL PARTICIPATION

The City reserves the right to extend all terms, conditions, specifications, and unit or other prices of any contract resulting from this Proposal to other public entities including, but not limited to, municipalities, governmental entities, school districts, and universities. This option is conditioned upon mutual agreement of all parties pursuant to special requirements which may be deleted from the original contract. The Proponent will notify any governmental entity that wishes to use any contract resulting from this Proposal that it must contact the City's Finance Department, Purchasing division, for approval of its utilization of the City's contract.

The City assumes no authority, liability or obligation, on behalf of any other governmental entity that may use any contract resulting from this Proposal. All purchases and payment transactions will be made directly between the successful Proponent and the requesting entity. Any exceptions to this requirement must be specifically noted in the Proposal response.

7.24 MISCELLANEOUS

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

Each SOQ submitted to the City shall be valid for a period of one hundred twenty (120) days from the date of opening of the SOQ by the City.

ATTACHMENT A - CATEGORIES FORM**Firm Name:** _____

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

- Roadway Schematic Planning and Design
- Bridge Planning, Design and Inspections
- Dam and Levee Design, Inspection, Regulatory Compliance and Permitting
- Structural Engineering Analysis and Design
- Architectural Planning and Design
- Electrical Engineering and Lighting Study, Analysis and Design
- Utility Engineering, Analysis and Design
 - Water
 - Wastewater
- Subsurface Utility Engineering (SUE), Utility Coordination
- Plan & Development Reviews
 - Engineering Development Plan Reviews
 - Building Permit Plan Reviews
 - Development Process Reviews
 - Permit Application Reviews
- Traffic Engineering
 - Traffic Engineering Studies and Impact Analyses
 - Traffic Signal Design and Timing
 - Signing, Marking and Traffic Control Plans
 - Intersection Analysis and Design
 - Intelligent Transportation Systems Planning and Design
 - Parking Planning, Analysis and Design
- Transportation Planning
 - Local and Regional Thoroughfare Planning
 - Corridor Alignment and Development Studies
 - Bicycle and Pedestrian Planning and Design
 - Streetscape Planning and Design
- Roadway Impact Fee and Proportionality Studies
- Transit Consulting Services
- Railroad Crossing and Quiet Zone Planning, Design, Regulatory Compliance and Permitting
- Construction Management & Inspection
 - Project Management
 - On-site Representation
 - Construction Inspection
- Public Works (Roadway and Stormwater) Construction Inspection
- Environmental Clearance, Compliance, Remediation, Permitting and Planning
- Archaeology and Cultural Resources Clearance, Compliance and Permitting
- Building Commissioning
- Facility and Property Assessment
- Registered Accessibility Specialist Plan Review and Inspection Services

ATTACHMENT A - CATEGORIES FORM (CONTINUED)

Firm Name: _____

- Geotechnical Engineering and Investigation
- Material Testing Services
- Public Involvement Services (Public Engagement and Facilitation)
- Landscape Architecture Planning and Design
- Stormwater Engineering
 - Stormwater Drainage Area Assessments and Studies
 - Stormwater Infrastructure Planning and Design
 - Low-impact Development and Water Quality Controls Planning and Design
 - Stormwater Utility Fee Support
 - Floodplain Modeling and Remapping
 - FEMA Letters of Map Change
 - Flood Mitigation and Warning Systems
 - NFIP Community Rating System Management
- Land Surveying and Plat Preparation
- Comprehensive Planning
 - Master Planning Services for Redevelopment of Publicly Owned Property
 - Community Needs Assessments
 - Land Use Planning
- Cost Estimating Services, Constructability Review and Value Engineering Analysis
- Municipal Solid Waste Study, Analysis and Design
- Real Estate Appraiser
- Other Professional Service: _____

OTHER Professional and/or Consulting Services categories not defined by Texas Government Code, Chapter 2254:

- Consulting and/or Administration for TxDOT Related Projects
- Branding, Marketing
- Economic Impact Assessments
- Other General Consulting Service: _____

ATTACHMENT B

COMPANY INFORMATION

1. Company Information:

- Company name: _____
- Company address: _____
- Year established: _____
- Number of years in business under present name: _____
- Form of ownership: Proprietorship Partnership Corporation Other (specify)
- When organized: _____
- If a corporation, where incorporated: _____
- Federal Employer Identification Number: _____
- Texas Comptroller's Taxpayer Number, if applicable: _____
- DUNS NUMBER: _____

- 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. 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 law suits, contracts defaulted or filed for bankruptcy.

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

Name: _____

Title: _____

Office Location: _____

Mailing Address: _____

* Telephone Number: _____ Fax Number: _____

Email Address: _____

** Emergency Contact Number for After-Hours Service: _____

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

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

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

Contact Person: _____

Phone: _____

Fax: _____

Email Address: _____

ATTACHMENT C - VENDOR CERTIFICATIONS

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

Provide responses that are clear and comprehensive.

Company name: _____

Permanent main office address: _____
Street City, ST ZIP

Tax ID No.: _____

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

To demonstrate qualifications to perform the scope of services, each Respondent is required to submit the following information to Owner for consideration.

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.sam.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. If a prequalified firm with the City of New Braunfels, our firm agrees to extend its services, terms and conditions listed in this RFQ to all governmental entities that have entered into, or will enter into, joint purchasing interlocal cooperation agreements with the City of New Braunfels. (Refer to Section 7, 7.23 Interlocal Participation.) Yes No

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

3. NON-COLLUSION CERTIFICATION:

- A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's cost Proposal? **Yes** **No**
1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
 2. That your cost Proposal is genuine and is not a collusive or sham cost Proposal;
 3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost Proposal, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost Proposal or in any other cost Proposal, or to secure through any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
 4. The prices quoted in your cost Proposal are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

4. HOUSE BILL 89 VERIFICATION:

- A. Contractor shall verify that it's named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270: **Yes** **No**
1. Does not boycott Israel currently; and
 2. Will not boycott Israel during the term of the contract.

Pursuant to 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.

ACKNOWLEDGEMENT

THE STATE OF _____

COUNTY OF _____

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

Company's Name

Signature, Authorized Representative of Respondent

Title

ATTACHMENT D – SAMPLE PROFESSIONAL SERVICES AGREEMENT
IDIQ PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into the _____ day of _____, 20____, by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as CITY and _____, hereinafter referred to as “CONSULTANT”.

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

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

NOW, THEREFORE, all parties agree as follows:

I. GENERAL

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

II. SERVICES

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

Consultant to perform services related to the assigned project for the City of New Braunfels, as negotiated with the City and specified in Scope of Work, marked as Exhibit “A”, attached hereto and incorporated into this Agreement.

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

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

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

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III. PAYMENT

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

IV. TIME FOR PERFORMANCE

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

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

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

V. DOCUMENTS

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

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

C. CONSULTANT agrees to and does hereby grant to CITY a royalty-free license to all such instruments of service which CONSULTANT may cover by copyright and to all designs as to which

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CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. CONSULTANT, upon request, agrees to furnish the originals of all such instruments including electronic design files of service to the CITY.

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

VI. TERMINATION

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

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

VII. INSURANCE

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

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

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

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

E. A signed Certificate of Insurance, satisfactory to CITY, showing compliance with the requirements of this Article shall be furnished to CITY before any services are performed. Such Certificate

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shall provide 30 days written notice to CITY prior to the cancellation or modification of any insurance referred to therein and continue to issue such certificate for four years after completion of the contract.

VIII. INDEMNIFICATION FOR INJURY AND PERFORMANCE

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

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

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

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

IX. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

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

X. INDEMNIFICATION FOR PERFORMANCE

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

ATTACHMENT D – SAMPLE PROFESSIONAL SERVICES AGREEMENT
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XI. ASSIGNMENT

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

XII. APPLICABLE LAWS

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

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

XIII. DEFAULT OF CONSULTANT

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

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

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

XIV. ADJUSTMENTS IN SERVICES

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

XV. EXECUTION BECOMES EFFECTIVE

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

XVI. AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of

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this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

XVII. GENDER AND NUMBER

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

XVIII. COMPLETE CONTRACT

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

XIX. NOTICES AND AUTHORITY

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

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

BY: _____
TITLE: _____
ADDRESS: _____

(Signatures on Following Page)

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

OWNER
THE CITY OF NEW BRAUNFELS

FIRM'S COMPANY NAME

BY: _____
Robert Camareno

BY: _____

TITLE: CITY MANAGER

TITLE: _____

ADDRESS:
550 Landa Street
New Braunfels, TX 78130

ADDRESS:

