



**REQUEST FOR PROPOSAL (RFP)
for**

Aviation Fuel Supplier

Solicitation No. RFP 21-018

Date Issued:

June 9, 2021

**RESPONSES MUST BE RECEIVED NO LATER THAN:
JUNE 29, 2021, 3:00 P.M. CT**

**City of New Braunfels, City Hall, 550 Landa Street, New Braunfels, TX 78130
Phone: 830-221-4081
Email: DKimball@nbtexas.org**



**SOLICITATION
AND OFFER**

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

Solicitation Number: RFP 21-018 Request for Proposal (RFP) Aviation Fuel Supplier	<input type="checkbox"/> Invitation for Bid (IFB)	Date Issued:
	<input checked="" type="checkbox"/> Request for Proposals (RFP)	June 9, 2021

SOLICITATION

Respondents must submit sealed Request for Proposal (RFP) containing one (1) signed original hardcopy and one (1) signed copy in electronic format (USB). Electronic signed bid submissions through BidNet Direct does not require submission of an original hardcopy and USB. Questions concerning RFP must be received, by email only, prior to **5:00P.M. CT on June 23, 2021**. RFPs will be received at the Office of the City Secretary at the address shown above until: **3:00 P.M. (CT), June 29, 2021**. There will be no public bid opening. RFPs received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact: <small>(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)</small>	Debbie Kimball Contract Administrator	Email: DKimball@nbtexas.org Phone: (830) 221-4081 Fax: (830) 608-2112
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5% Proposal Bond Required:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
100% Payment Bond Required:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
100% Performance Bond Required:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> 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: _____

Company Name, Contact Person, and Address of Respondent:	Name and Title of Person Authorized to Sign Offer:
	E-Mail Address:
	Phone Number:
	Fax Number:

Signature:	Date:
Title:	

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

(Applies to Request for Proposal only)

SECTION 2 – TABLE OF CONTENTS

SECTION 1 – SOLICITATION AND OFFER FORM	2
SECTION 2 – TABLE OF CONTENTS	3
SECTION 3 – PROJECT DESCRIPTION, SPECIFICATIONS AND SCOPE OF WORK	4
SECTION 4 – REQUIREMENTS FOR REQUEST FOR PROPOSAL	12
SECTION 5 – SELECTION INFORMATION	15
SECTION 6 – CONTRACT TERMS AND CONDITIONS	19
ATTACHMENT A – VENDOR CERTIFICATIONS	27

SECTION 3 – PROJECT DESCRIPTION, SPECIFICATIONS AND SCOPE OF WORK

3.1 BACKGROUND

The New Braunfels Regional Airport (KBAZ) was built in 1941 as an auxiliary training airfield for the US Army Air Corps. KBAZ was recently reclassified as a National Airport within NPIAS. The airport is located on the eastern edge of the City, approximately 3 miles east of I-35 and SR 306.

The airport operates as a Class D airspace between 0700-1900 with a contract FAA Air Traffic Control Tower. KBAZ has two (2) runways (RY 13-31 and RY 17-35) with precision and non-precision GPS approaches. KBAZ is home to six (6) commercial hangars, three (3) repair stations, an avionics shop, two (2) flight schools, and six (6) privately owned corporate hangars. Flight operations are averaging 5500-5700 per month.

3.2 DESCRIPTION OF PROJECT

The City of New Braunfels is seeking proposals from qualified aviation fuel suppliers to provide Aviation Fuel (bulk) (Type 100LL and Jet A) for resale and other related services to the New Braunfels Regional Airport (KBAZ), 2333 FM 758, New Braunfels, TX 78130.

3.3 SCOPE OF WORK

The Airport intends to purchase Jet A Turbine Fuel (with pre-blended FSII additive) meeting ASTM D-1655 specification, or latest revision thereof, and AVGAS 100LL meeting ASTM D-910 specification, latest revision or future replacement., by contract for resale. New Braunfels Regional Airport is currently operating two (2) 12,000 gallon above ground storage tanks; one (1) dedicated for 100LL and one (1) for Jet-A pre-blended fuel. In addition, the airport operates two 5,000-gallon mobile Jet A refuelers and a 1,000-gallon mobile 100LL refueler. The airport is considering upgrading the 100LL refueler to a larger capacity tank. Historical fuel sales are detailed in Table 1 – KBAZ Fuel Sales below.

All fuel will be ordered and scheduled by the New Braunfels Regional Airport personnel. All fuel will be deposited in Airport fuel tanks and transported by licensed and approved common carriers.

All aviation fuel supplied under this contract must conform in every aspect to all standards and regulations established by Federal, State and Local laws. If any of the applicable standards and regulations is/are updated/revised during the term of the contract; the contractor must conform to the latest version.

3.4 GENERAL REQUIREMENTS

The following are expectations of the Airport as they relate to fuel. They are to be included in the proposal narrative with any additional items proposer desires to offer.

3.4.1 Vendor shall include with their proposal specifications showing their Jet A with additive meets the latest requirements of ASTM (American Society for Testing and Materials) D-1655 and their Avgas (100LL) meets the requirements of ASTM D-910 (latest revision).

3.4.1.1 Each tanker supplying fuel to the Airport fuel farm shall be dedicated to aviation fuel products only and shall not carry any other products. Proposer/transporter will only transport like types of fuel to prevent fuel contamination and will provide documentation of pre-delivery testing detailing what was previously contained in the delivery vehicle and method of cleaning.

3.4.1.2 Traceability of fuel product shipments, from refinery to the Airport fuel farm.

3.4.1.3 The selected company shall perform and document the following tests before shipments are unloaded at the Airport fuel farm:

3.4.1.3.1 Visual

3.4.1.3.2 Color

3.4.1.3.3 WSIM (Jet A only)

3.4.1.3.4 Bottom sediment and water

3.4.1.3.5 Temperature

3.4.1.3.6 ASPI gravity

3.4.1.4 The Airport may perform any additional tests it deems necessary upon receipt and reserves the right to reject any delivery it deems unsuitable. The City maintains the right to reject any operator/truck that does not meet the standards herein.

3.5 PROFESSIONAL LINE SERVICE TRAINING PROGRAM

3.5.1 Proposer shall provide a description of all available or provided training materials including web or computer-based elements. Training shall be specific to the following areas: ground servicing, safety, refueling piston aircraft, refueling turbo prop aircraft, refueling jet aircraft, towing aircraft, quality control, fuel farm management, customer service, fire safety and maintenance. Proposer shall describe any on-site training (via contractors and/or salaried employees). Consideration will be given to programs subsidized by the Proposer.

3.5.2 Proposer must provide training for self-fuel inspections and provide the documents and equipment for performing fuel tests and maintaining records.

3.5.2.1 Describe the frequency of training to be provided.

3.5.2.2 Provide current Quality Control Manuals

3.6 REFUELERS

3.6.1 Lease Program

Proposer shall describe any program that will provide the Airport with a 5,000-gallon Jet-A refueler and a 1,200 or 1,500-gallon 100LL refueler. Included with the proposal include a detailed description of ongoing repair and maintenance programs.

3.6.2 Relief Refuelers

Proposer will make relief refuelers available, as required, to meet special needs and events at the New Braunfels Regional Airport or temporarily replace refuelers out of service for mechanical repair. Describe the costs and terms for providing this service.

3.6.3 Termination of Contract

Upon termination of the contract, Proposers agrees to timely remove furnished refuelers at Proposer's expense, including all transportation costs.

3.7 FUEL PRICING & GENERATORS

3.7.1 Aviation Fuel Price

Prices will be quoted on a per gallon basis inclusive of transportation cost (including Port of Entry costs and road tolls, regardless of Port of Entry), but exclusive of taxes and other fees. In addition to the fuel price, vendor must provide an itemized list of all applicable taxes and fees.

3.7.1.1 Assured supply must be guaranteed in a contract tendered along with Vendor's proposal.

3.7.1.2 Primary supply point for Jet A with pre-mixed FSII additive delivered price including freight, Port of Entry and road tolls, but exclusive of all taxes and fees, price per gallon, for either full transport quantities or less than full transport quantities. For comparison purposes, quoted price will be that price in effect on June 1, 2021 (Platts Gulf Coast Mean). Include an itemized list of all applicable taxes and fees.

Alternate supply point for Jet A must be the same price as the primary supply point price including freight, Port of Entry and road tolls, but exclusive of all taxes and fees.

3.7.1.3 Primary supply point for Avgas 100LL delivered price including freight, Port of Entry and road tolls, but exclusive of all taxes and fees, price per gallon, for either full transport quantities or less than full transport quantities. For comparison purposes, quoted price will be that price in effect on June 1, 2021. Include an itemized list of all applicable taxes and fees.

Alternate supply point for Avgas 100LL must be the same price as the primary supply point price including freight, Port of Entry and road tolls, but exclusive of all taxes and fees.

3.7.1.4 Transportation and operational cost increases/decreases from the primary supply points will be passed through with documentation during the term of the contract. Vendor shall provide a method for changes in operational costs.

3.7.2 The Airport desires to receive the best possible pricing and in order to facilitate the comparison of proposals, it is necessary that all proposals be based on PLATTS Gulf Coast Mean for Jet A and Gulf Coast 93 PUL for 100LL (avgas).

3.7.2.1 Provider shall provide an explanation of the method for determining fuel price, timing of price changes, and method of conveying changes to the Airport. Conveyance of price changes to the Airport shall include verification of price basis used and the Airport must be able to verify price on each invoice throughout the term of the contract. Proposers must provide a FIRM PRICE DIFFERENTIAL for AVGAS & JET A with additive as follows:

3.7.2.2 Price for Avgas 100LL is the price in effect at time of delivery and is based on a formula using PLATTS Gulf Coast Pipeline Unleaded 93 prior week average. The price will itemize the fuel price index, delivery/freight charges, differential, and taxes. Any additional fees should be included as a separate line item.

3.7.2.3 Price for JET A is the price in effect at the time of delivery and is based on a formula using PLATTS Gulf Coast Mean for Jet A prior week average. The price will itemize the fuel price index, delivery/freight charges, differential, and taxes. Any additional fees should be included as a separate line item.

- 3.7.3** The reports are normally available on Tuesdays or Wednesdays. The Monday report will be the reference for prices for all purchases made beginning the following Tuesday for a period of one (1) week, which would be from Tuesday through Monday.

Contractor will be required to furnish a computer printout each week showing the above calculations and prices in effect for the period, to be emailed to the office of the Airport Director. *Proposals not based on PLATT formula will be rejected.*

- 3.7.4** Quote F.O.B. from preferred loading terminal rack delivered to fuel storage tanks at New Braunfels Regional Airport, New Braunfels, Texas with delivery and unloading charges prepaid. Contractor bear freight charges. In the event the preferred terminal is inoperative, proposer incurs additional freight costs.

- 3.7.5** Fuel Delivery: Describe procedures for ordering fuel, turnaround time for delivery of fuel, and provisions for emergency deliveries of fuel.

3.7.5.1 Restrictions: Specify any and all restrictions to be entertained.

3.7.5.2 Contracts: Provide copies of all potential contracts that Vendor proposes to use to provide services under this RFP, including but not limited to the following examples: Aviation Aircraft Fuel Service Agreement; Aviation Retail Sales Agreement; Aviation Dealer Credit Card Agreement; Transaction Processing Policy, and Aviation Refueler Lease Agreement.

3.7.5.3 Contract Point of Contact: Vendor must provide a single point of contact for all aspects of the agreement. Other: Additional information, proposals or incentives may be provided at Vendor's discretion.

3.8 CREDIT CARD PROCESSING

- 3.8.1** The program shall be a nationally recognized credit card program.

- 3.8.2** The system must be capable of electronically processing credit cards with monies returned to the City electronically. List the credit cards accepted by the Proposer including at least the following: Internationally recognized Vendor retail credit cards, Master Card, Visa, AvCard, Multi Service Card, American Express, U.S. Bank, Voyager Fleet, and Discover. Proposer shall accept state and federal government issued credit cards without fee.

3.8.2.1 Successful vendor shall supply an electronic credit card POS or equivalent machine, receipt printer and manual imprinting equipment, with all credit card supplies, forms, materials, etc. provided free of charge to the Airport.

3.8.2.2 Proposer's POS machine/system shall provide for normal airport related charges in addition to fuel such as tie down fees, hangar or lease payments, pilot supplies, oil and/or catering among others.

3.8.2.3 Proposer credit card processing must be compatible with QTPOD for self-service refueling operations.

3.8.2.4 Proposer must provide toll-free credit card authorization service.

- 3.8.3** Vendor shall describe all charge back stipulations in proposal.

- 3.8.4 Identify processing fees associated with various credit card processing.
- 3.8.5 Identify credit card reimbursement timing and method of transferring funds to the City.
- 3.8.6 Describe branded credit card programs that offer the City 0% processing fees.
- 3.8.7 Proposer will provide daily detailed reports and receipts showing individual transactions. Proposer shall provide samples of invoices, monthly reports, and statements if requested during contract negotiations.

Sales transaction reports must include product type, aircraft tail registration, and gallon amount purchased.

3.9 SUPPORT SERVICES

3.9.1 Insurance Program: Proposer will provide details of insurance program as directed by the insurance requirements attached to this RFP.

3.9.2 Quality Control and Assurance Guarantees. Quality Control Program must include but not limited to:

3.9.2.1 Regularly scheduled fuel farm inspections with documentation, and regular inspections and documentation for refueler(s) (proposer to state frequency of inspections).

3.9.2.2 Filter changes on all refuelers and fuel farm, including self-service at least annually, or more frequently as dictated by federal regulations.

3.9.2.3 Filter changes and cleaning of system if it is determined that a contaminated load of fuel was received into the fuel farm.

3.9.2.4 Safety audit frequency and procedures on equipment.

3.10 BRAND IDENTIFICATION

3.10.1 Indicate availability to provide and install brand identification at the self-service fuel facility. Signs shall be installed at the beginning of the contract period, equal in size to existing, or agreed to by the Federal Aviation Administration, the Texas Department of Transportation Aviation Division, and the City of New Braunfels.

3.10.2 New Braunfels Regional Airport desires an additional free standing tall pylon sign with the fuel brand, and inclusive of the FBO's name, to be located adjacent to the fuel farm. The sign must meet or exceed windstorm guidelines as outlined in IBC 2006 for a 120 MPH, 3 second gust exposure "C" area.

3.10.2 Upon termination of the contract, Proposers agrees to timely remove all branding/signage at Proposer's expense.

3.11 ADMINISTRATIVE SUPPORT

3.11.1 **Administrative Support.** Proposer shall provide administrative support relative to the Proposer-Airport relationship.

3.11.2 **Account Manager.** Proposer shall provide an account manager whose interest and functions are aviation and product sales.

3.11.3 **Branded Uniform Program.** Proposer shall provide a branded uniform program.

3.11.4 Technical Expertise. Proposer must provide technical expertise and have available proprietary laboratory support for fuel testing.

3.11.5 Proposer Restrictions:

3.11.5.1 Airport will consider but proposer may not impose any retail/wholesaler credit card related discount/rebate programs that require City participation or funding.

3.11.5.2 Airport will consider but proposer may not impose retail/wholesale purchase programs requiring Airport participation or funding relating to customer volume discounts.

3.12 PREMIER FBO PROGRAM

If Proposer sponsors a premier FBO program, describe the program in submitted proposal. A premier FBO program is not mandatory to offering a proposal.

3.13 NATIONAL SALES PROMOTION AND ADVERTISING PROGRAM

3.13.1 National Advertising: Identify and outline a continuous annual national sales promotion program. Include a copy of the current advertising insert and name of publication or trade journals/magazines and at what cost. Describe how the Airport would be included.

3.13.2 Cooperative Advertising Program: Identify and describe any co-operative advertising programs including a branded uniform program. Include any special project or local advertising cost and support for advertising and promotion of fuel sales at the Airport. Provide details of how credit is applied and maintained. State the allowance which will be provided to the City for advertising the seller's product.

3.13.3 Aviation Industry Participation: Describe trade show participation by Proposer at relevant conventions. Identify opportunities for the Airport. Discuss proposer membership in industry organization (e.g., NBAA and NATA) demonstrating active participation on committees. Identify aviation directory support.

3.13.4 National Sales Promotion Program: Provide availability of a national sales promotion program. Program must be cost effective with potential for generating new and repeat business.

3.14 IMPLEMENTATION AND START UP PLAN

Proposers shall provide a detailed start-up plan that assures a smooth transition from the current fuel provider with no interruption of services to the Airport. This plan shall include, but not be limited to, fuel delivery, installation of signs, training program and timeframe (calendar days) required to be operational after award.

3.15 REFUELING LIABILITY INSURANCE OPTION

In addition to the standard insurance requirements attached to this RFP, the proposer shall provide the option for Airport to obtain refueling liability (product liability) insurance with single limits coverage of a minimum of \$50,000,000.00 per occurrence through an additional insured excess liability amount on proposer's fuel insurance policy.

3.16 DISCOUNTS, REBATES, ADDED-VALUES

Discounts & rebates received by the Proposer shall be passed along, in full, to New Braunfels Regional Airport. Describe rebate schedule to the Airport based on usage (price per gallon).

Vendor may propose & describe additional goods or services that may provide added-value to their proposal. These may include promotional items, advertising, equipment or use of equipment or other goods or services.

3.17 LIQUIDATED DAMAGES

The parties agree that, in the event of breach by Proposer of its promise under this Contract to make delivery of fuel within 3 days of order by the Airport, or of its promise to deliver fuel products

confirming to the specifications of this Contract, there will be great difficulty in establishing and proving loss, as well as great inconvenience or even non-feasibility in attempting to obtain an adequate remedy at law by the Airport. Failure to deliver fuel timely may delay or interrupt airport operations, and further, delivery of nonconforming product may cause damage to customer equipment. Therefore, in respect to the kinds of conceivable harm that might be anticipated or actually caused by the breach, the parties agree that the amount which would be reasonable in light of such harm, difficulties, inconvenience or non-feasibility, as liquidated damages would be the following:

- A) For any individual failure by vendor to make timely delivery of a separate order by Airport:
 - One (1) cent per gallon times the total number of gallons; and,
- B) For any individual failure by vendor to deliver conforming product for any individual order by Airport under this Contract, the sum of 25% OF THE TOTAL PRICE OF THE FUEL ACTUALLY DELIVERED IN SUCH INDIVIDUAL SHIPMENT.

3.18 ADDITIONAL INFORMATION REQUIRED

3.18.1 Above Ground Tanks: Proposer is to provide information regarding available engineering and consulting services for construction of new above ground tanks (if offered). Please explain the services.

3.18.2 Airport reserves the right to order any quantity necessary to meet the needs of the airport and their clients. Proposer must be able to receive requests for fuel during the hours of 0600 – 2000 Central. No guarantee is made by the Airport to purchase any amount of product from any contractor as a result of prices offered by the Proposer and approved by the Airport.

3.19 DELIVERY INFORMATION

3.19.1 Ordinary Delivery

Unless otherwise indicated herein, all deliveries are to be made within forty-eight (48) hours following the receipt of an order by the New Braunfels Regional Airport.

The awarded Proposer shall notify the Airport of any circumstances which may cause any deliveries to exceed the forty-eight (48) hour time frame.

3.19.2 Emergency Delivery

Unless otherwise indicated herein, all emergency deliveries are to be made within twenty-four (24) hours following the receipt of an order by the New Braunfels Regional Airport.

The awarded Proposer shall notify the Airport of any circumstances which may cause any emergency deliveries to exceed the twenty-four (24) hour time frame.

3.19.3 Hours of Delivery

Unless otherwise indicated herein, all deliveries will be expected only between the hours of 9:00 a.m. and 4:00 p.m., CST, Monday through Friday, holidays excepted, unless otherwise agreed upon by the Proposer and New Braunfels Regional Airport.

3.20 SPILLAGE

Any spills caused by the carrier during offloading of fuel must be corrected on an immediate basis to the satisfaction of the City of New Braunfels and New Braunfels Regional Airport. All associated costs including material and labor shall be the responsibility of the contractor.

3.21 ESTIMATED FUEL SALES

Below is a table indicating historic Jet A AND 100LL fuel sales at New Braunfels Regional Airport.

Table 1 - KBAZ Fuel Sales

JET A GALLONS				
	FY17-18	FY18-19	FY19-20	FY20-21
OCT	35980	38,608	37,293	41,809
NOV	36583	35,063	29,381	26,287
DEC	31207	35,609	28,943	27,087
JAN	28444	35,331	28,070	23,787
FEB	33362	37,941	25,902	14,666
MAR	39869	42,063	21,606	42,252
APR	39507	26,967	15,787	29,839
MAY	32638	36,887	13,045	
JUN	46875	41,078	27,681	
JUL	43081	29,346	22,634	
AUG	36698	37,648	27,427	
SEP	33115	31,052	26,455	
TOTAL	437359	427,593	304,224	205,727

100LL GALLONS				
	FY17-18	FY18-19	FY19-20	FY20-21
OCT	8537	6,306	12,299	14,301
NOV	7432	8,324	10,576	9,923
DEC	5774	9,025	10,961	10,034
JAN	6332	10,650	11,400	9,388
FEB	3379	6,845	11,805	5,384
MAR	8502	10,453	7,265	10,287
APR	7705	10,818	8,806	8,258
MAY	6614	10,359	11,275	
JUN	5660	12,913	14,136	
JUL	6939	15,383	15,591	
AUG	9223	13,875	16,612	
SEP	5214	12,501	12,041	
TOTAL	81311	127,452	142,767	67,575

TOTAL GALLONS				
	FY17-18	FY18-19	FY19-20	FY20-21
OCT	44516	44,914	49,592	56,111
NOV	44015	43,387	39,957	36,210
DEC	36981	44,634	39,904	37,121
JAN	34776	45,981	39,470	33,175
FEB	36741	44,786	37,707	20,050
MAR	48371	52,517	28,871	52,539
APR	47212	37,785	24,593	38,097
MAY	39252	47,246	24,320	
JUN	52534	53,991	41,817	
JUL	50020	44,729	38,225	
AUG	45921	51,523	44,039	
SEP	38328	43,553	38,496	
TOTAL	518667	555,046	446,991	273,303

SECTION 4 – REQUIREMENTS FOR REQUEST FOR PROPOSAL

4.1 PROPOSED SOLICITATION SCHEDULE

DATE	
June 9, 2021	RFP issued on http://www.bidnetdirect.com/texas and www.nbtexas.org/
June 23, 2021	Deadline for questions and request for clarification
June 29, 2021	Request for Proposals (“RFP”) submission deadline
July/August 2021	City evaluation of RFPs submitted by firms
August/Sept. 2021	Anticipated timeframe for City Council to consider award of contract

4.2 CONTACT FOR QUESTIONS

Questions relating to definitions, interpretations, and/or requests for clarification must be in writing, on or before **June 23, 2021 at 5:00 P.M. (Central Time)**, directed to:

Purchasing Representative: Debbie Kimball, Contract Administrator, via email dkimball@nbtexas.org

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

Questions – RFP 21-018 “Aviation Fuel Supplier”

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

4.3 RESPONSES TO INQUIRIES

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

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

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.

4.4 SUBMISSION / DELIVERY INSTRUCTIONS

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

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

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

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

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

The outside of the Proposal envelope or package must state:

"RFP 21-018 Request for Proposal for Aviation Fuel Supplier, City of New Braunfels, Texas Proposal Due Date: June 29, 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.

- 4.4.1** Proposers wishing to be considered for a contract is requested to submit on their Company'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 RFP. Should you opt not to follow the suggested outline, it may result in the RFP being considered non-responsive and therefore not considered in the selection process.
- 4.4.2** To achieve a uniform review process and to obtain the greatest degree of comparability, the City of New Braunfels requires that RFP be submitted with **one (1) original signed hardcopy & one (1) electronic copy provided on USB OR electronic submission through BidNet Direct.**
- 4.4.3** An authorized official of the Proposer must print or type their name and **SIGN THE RFP.**
- 4.4.4** Responses must be bound and submitted in a sealed envelope or package.
- 4.4.5** THE FOLLOWING ITEMS MUST BE INCLUDED IN YOUR REQUEST FOR PROPOSAL IN THE FOLLOWING ORDER.
- Cover/Title Page:** showing the Request for Proposal subject; the company's name; the name, address, email and telephone number of the contact person; and the date of the response.
- TAB 1: Solicitation and Offer Form and Addendums:** Failure to include a signed copy of the Solicitation Offer and all addendums issued will result in the removal of the RFP from consideration, if any.
- TAB 2: Statement of Interest:** *please limit response to 1 page and minimum 10-pt font.* Concisely state your understanding of the services required and availability of your company, its principals (s) and assigned professionals to undertake the project, reporting

responsibilities and how the firm will interface with the City of New Braunfels project manager.

TAB 3: Evaluation Selection Criteria 1. (30 Points) Offered Pricing and Refueler Leasing Options (per Section 3) Provide all pricing requested within the RFP and any other pricing you wish the City to consider in their evaluation process.

TAB 4: Evaluation Selection Criteria 2. (25 Points) Include all information requested

TAB 5: Evaluation Selection Criteria 3. (25 Points) Include all information requested

TAB 6: Evaluation Selection Criteria 4. (15 Points) Include all information requested

TAB 7: Evaluation Selection Criteria 5. (5 Points) Include all information requested

TAB 8: Other Support and Attachments

- Vendor Certifications – Attachment A (**Failure to submit Attachment A will deem your proposal non-responsive**)
- Conflict of Interest Form (per Section 6.17)
- Certificate of Interested Parties – Form 1295 (per Section 6.18)
- Proof of Insurance: A “for information purposes only” copy is acceptable. The awarded Proposer will be required to provide their certificate of insurance prior to contract award.
- Attach copies of licenses, certifications, or any other documentation not referenced under another tab you wish to submit for City’s consideration.
- Copies of contracts and/or agreements you wish the City to consider if awarded this service.

TAB 9: Deviations from Request for Proposal. 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 RFP 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.

4.4.6 Respondent should be aware that the contents of the successful RFP response will become part of subsequent contractual documents.

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

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

4.5 WHAT IS NOT ACCEPTED:

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

SECTION 5 – SELECTION INFORMATION

5.1 SELECTION AND AWARD PROCESS

This RFP provides information necessary to prepare and submit Request for Proposals for consideration and ranking by the City. By submitting its Proposal in response to this RFP, Respondent accepts the evaluation process as outlined in the following section, acknowledges, and accepts that determination of the “most qualified” company may require subjective judgements by the City.

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

Two Step Process

- **Step 1: Review, analyze and evaluate RFP submittals.**
 - All respondents’ RFPs will be ranked based upon the selection evaluation criteria established in the solicitation.
 - The selection committee will rank the responses in order of the most qualified, based on demonstrated competence and qualifications to perform the services, along with all evaluation selection criteria referenced in the RFP, then will make a determination based upon the final ranking.
 - City staff may select short-listed proposers based on an evaluation of the written materials submitted. Short-listed proposers may be asked to submit additional information and may be interviewed where they may give a presentation and answer City questions.
- **Step 2: Selection, Interviews (if applicable), Contract Negotiations, Award.**
 - City staff will initiate negotiations with the top-ranked respondent to develop a finalized scope of work, negotiate costs, if necessary, negotiate contract terms and conditions, etc.
 - After successful negotiations, the selection committee will make a recommendation to the City Council for award of a contract to the selected proposer.
 - The contract will be subject to approval by the New Braunfels’ City Council.

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

5.2 SELECTION CRITERIA

The City of New Braunfels will review all Request for Proposals (RFPs) submitted in response to this solicitation using the criteria presented below and rate each firm by category. The firm will be recommended for award by City Council based upon the published selected criteria noted below. The evaluation committee recommendations are subject to approval by the City of New Braunfels City Council.

5.2.1 Evaluation Standard; Evaluation Committee. A committee comprised of City of New Braunfels staff will evaluate the RFPs submitted. RFPs 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 Airport. The following criteria are those that will be applied in the evaluation of the RFP:

EVALUATION SELECTION CRITERIA:

1. **30 POINTS**
 - a. Fuel delivered price and demurrage fee
 - b. Refueler Leasing Options and pricing

2. **25 POINTS**
 - a. Delivery timeframe from time of order
 - b. Maintenance Support
 - c. Customer Support
 - d. Quality Control Support
 - e. Adequacy of proposer's facilities to provide the goods and services as shown in this proposal.

3. **25 POINTS**
 - a. Proposer's overall qualifications and experience
 - b. References and Resumes

4. **15 POINTS**
 - a. Strength of Sales Promotion/Advertising Program
 - b. Proposer's Incentives and Rewards Program for Customers
 - c. Marketing Campaign & Strategies
 - d. Special Events Contribution & Support

5. **5 POINTS**
Implementation & Start Up Plan

Interviews (OPTIONAL) UP TO 15 ADDITIONAL POINTS

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

- The number of Proposers interviewed will depend on the closeness of the scores following evaluation of the written proposals.
- Staff will consider significant gaps in point separation between the top ranked firms in determining the number of firms to be interviewed.
- Only firms that are considered qualified to perform the work, on the basis of their written proposal, will be invited for interviews.
- No more than five (5) firms will be interviewed.
- Staff may conduct interviews where staff believes it is in the best interest of the City.
- The City reserves the right to determine whether an interview will be conducted or deemed necessary.

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

- 5.2.2** The City reserves the right to reject any or all proposals, to waive informalities and accept the proposal that the Owner believes is the most advantageous to the public interest and the City.
- 5.2.3** For this RFP, Respondent's qualifications will be evaluated, and the most qualified Respondent will be selected, subject to negotiation of fair and reasonable compensation. Negotiations may be undertaken with the Proposer in which their RFP best addresses the needs of the proposed services and demonstrates the ability and experience to perform the work. Award of the contract will be to the responsive Proposer whose RFP is most advantageous to the City.
- 5.2.4 References.** Contact information for client references must be current. Please include contracts awarded to your company complete with a current point of contact for the client, telephone number, email address if available, summary of the work performed, and a contract term.
- 5.2.5 Subcontracting.**
If subcontracting with another company or an individual on this project, this must be identified in your proposal, and the subcontractor's credentials must be submitted with your proposal for the City's review and evaluation consideration.
- 5.2.6 RFP Form.** Responses of excessive length or complexity are discouraged. The City reserves the right to include the selected RFP, or any part of the selected proposal, in the finalized contract award. Emphasis is on completeness and clarity of content.
- 5.2.7 Other Considerations.** The City reserves the right to request additional information or consider historical information and facts, whether gained from the RFP, references, or any other source, in the evaluation process, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent's background, personnel, experience, financial and other references, management practices, exceptions to the RFP or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.

5.3 LIMITATIONS

- 5.3.1 Right to Accept or Reject.** The City reserves the right to accept or reject any or all Proposals as a result of this RFP, 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 RFP does not commit the City to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFP.
- 5.3.2 Request for Proposals to Remain Subject to Acceptance.** All submitted Proposals will remain subject to acceptance for one hundred twenty (120) days after opening without taking action.
- 5.3.3 City Council Approval Required.** The City of New Braunfels City Council must approve the Proposer selected to provide the services requested in this RFP. The City reserves the right to authorize contract negotiations to begin without further discussion with Proposers submitting a response. Therefore, each RFP 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 RFP.

5.3.4 Proposer or Individual's Obligation Regarding Evaluation.

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

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

5.3.6 Lobbying Prohibited. Proponents are prohibited from directly or indirectly communicating with City Council members regarding the Proponent's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFP. Proponents are prohibited from contacting any city staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Communications are to be limited to the City representative listed on Page 1 of the RFP. Any violation will result in immediate disqualification of the proponent from the selection process.

5.4 RFP SPECIFICATIONS

5.4.1 Modification or Withdrawal of Proposal. RFPs cannot be altered or amended after the submittal deadline. RFPs 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 RFP may also be withdrawn by providing the same notice or in person by a submitter or the submitter's authorized agent, providing the agents identify is made known and the agent signs a receipt reflecting the RFP is being withdrawn. **HOWEVER, IN THE EVENT OF WITHDRAWAL, THE SUBMITTER WILL NOT BE ALLOWED TO RESUBMIT.** This provision does not change the common law right of a firm or individual to withdraw an RFP due to a material mistake in the RFP.

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

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

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

Submitters shall acknowledge receipt of all addendums in their Proposal submittal.

SECTION 6 - CONTRACT TERMS AND CONDITIONS

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

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

6.3 ELEMENTS OF CONTRACT

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

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

6.4 CONTRACT TERM

This contract shall be for five (5) years and will begin upon the effective date of October 1, 2021, or the begin date specified in contract award, whichever is later, through September 30, 2026.

6.5 OPTION TO RENEW

At City's option, this Contract may be renewed under the same terms and conditions for two (2) additional one (1) year period(s). Renewals will be in writing and signed by the City's Purchasing Manager, without further action by City Council, subject to, and contingent upon, the appropriation of sufficient funding. Contractor must contact City's Purchasing Representative no later than ninety (90) days prior to end of contract term to request any contract modifications, including cost adjustment.

6.6 PRICE ADJUSTMENTS

After the pricing schedule has been established in the initial agreement, requests for price increases and/or decreases must be made in writing and submitted by an authorized representative of the Awarded Vendor to the Purchasing representative noted on Page 1 of this Solicitation. Vendor must submit supportive documentation for increase request. Price adjustments are at the discretion of the City and adjustments shall be approved at the City's discretion, with City Manager's approval, as needed.

The City prefers that price adjustments be based on unadjusted percent change for the preceding year in the CPI-W under the expenditure category mutually agreed upon by City and Vendor, which is provided by the U.S. Bureau of Labor Statistics. Any other sources to support a request for price adjustment must be mutually agreed upon by City and Vendor.

6.7 CONTRACT CHANGES

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

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

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

6.8 RIGHT TO TERMINATE; NOTICE REQUIREMENT

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

6.9 SELECTED FIRM OR INDIVIDU'S OBLIGATION TO MAKE REPORTS

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

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

6.10 ASSIGNMENT; TRANSFER

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

6.11 FORCE MAJEURE

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

6.12 INSURANCE AND LIABILITY

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

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

Bodily Injury/Property Damage (combined single limit, each incident	-	\$1,000,000
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>		
Employers Liability	-	As Statutorily required
Each Accident	-	\$1,000,000
Policy Limit by Disease	-	\$1,000,000
Each Employee by Disease	-	\$1,000,000

By submittal to this RFP, 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.

Refer to Section **3.15 REFUELING LIABILITY INSURANCE OPTION** for additional insurance requirements.

6.13 PAYMENT AND INVOICING REQUIREMENTS

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.

6.14 INDEPENDENT CONTRACTOR

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

6.15 SUSTAINED DAMAGES

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

6.16 CONFIDENTIALITY OF DOCUMENTS

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

6.17 INDEMNIFICATION

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

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

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

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

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

6.18 MISCELLANEOUS

All costs directly or indirectly related to the preparation of a response to this RFP shall be the sole responsibility of and shall be borne by the firm.

- a. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Firm or Individuals, or to allow corrections of errors or omissions.
- b. The City reserves the right to retain all proposals submitted and to use non-confidential information in an RFP regardless of whether or not that RFP is selected.

- c. Each RFP shall state that it is valid for a period of one hundred twenty (120) days from the date of opening of the RFP by the City.

6.19 NON-NEGOTIABLE TERMS

The following terms or conditions are not negotiable:

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

6.20 CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)

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

Form CIQ is available from the Texas Ethics Commission by accessing the following web address: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm

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

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

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

6.21 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 and copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

**ATTACHMENT A
VENDOR CERTIFICATIONS**

The Proposer is required to submit the following information to Owner for consideration:
Provide responses that are clear and comprehensive.

Company name: _____

Permanent main office address: _____
Street City, ST ZIP

Tax ID No.: _____

1. Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in law suits, contracts defaulted or filed for bankruptcy.

2. Form of ownership: Proprietorship Partnership Corporation Other (specify)

DEBARMENT/SUSPENSION INFORMATION:

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

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

CERTIFICATIONS:

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. Yes No

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made
 - 1. to influence the solicitation process or the execution of the Contract to the detriment of Owner,
 - 2. to establish Cost Estimate or Contract prices at artificial non-competitive levels, or
 - 3. to deprive Owner of the benefits of free and open competition;
- C. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owner, a purpose of which is to establish Cost Estimates at artificial, non-competitive levels; and
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

2. **NON-COLLUSION CERTIFICATION:**

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

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

3. **HOUSE BILL 89 VERIFICATION**

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

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

Pursuant to Section 2270.001, Texas Government Code:

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

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF _____

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

Company's Name

Signature, Authorized Representative of Respondent

Title