

CITY OF NEW BRAUNFELS



REQUEST FOR COMPETITIVE SEALED PROPOSALS for

Fiber Optic Cable Construction Project

Solicitation # **CSP 22-015**

Date Issued:

February 4, 2022

**RESPONSES MUST BE RECEIVED NO LATER THAN:
3:00 P.M. CST MARCH 1, 2022**

Proposal
Bond: 5%

Performance
Bond: 100%

Payment
Bond: 100%

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

New Braunfels Purchasing Department:

Barbara Coleman

Phone: 830-221-4389

Email: bcoleman@nbtexas.org



SOLICITATION AND OFFER

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

| | | |
|--|--|--|
| Solicitation Number: CSP 22-015 Fiber Optic Cable Construction Project | <input type="checkbox"/> Invitation for Bid (IFB) <input checked="" type="checkbox"/> Competitive Sealed Proposal (CSP) | Date Issued: February x, 2022 |
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SOLICITATION

Questions may be submitted until close of business day on **February 18, 2022, 5:00 P.M. (CST)**.
 Proposers must submit proposals in a signed original, with 1 hard copy, and 1 in digital format (.pdf File on USB Thumb Drive).
 Proposals will be **received and read aloud** at the New Braunfels City Hall, City Secretary Office at the address shown above until:
3:00 P.M. (CST), March 1, 2022.

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

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| For information regarding this solicitation, contact: <small>(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)</small> | <u>Purchasing Representative</u> Barbara Coleman Purchasing Manager | Email : BColeman@nbtexas.org Phone : (830) 221-4389 Fax: (830) 608-2112 |
|--|---|---|

| | | | |
|---------------------------------|---|-----------------------------|--|
| 5% Proposal Bond Required: | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO | (If YES, refer to information in Section 5.) |
| 100% Payment Bond Required: | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO | (If YES, refer to information in Section 5.) |
| 100% Performance Bond Required: | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO | (If YES, refer to information in Section 5.) |

OFFER

(This portion must be fully completed by Proposer.)

In compliance with the solicitation documents, the undersigned in compliance with the Solicitation and Instructions to proposers and having examined the Project Manual, Drawings, Addenda and being familiar with the character of work included in these solicitation documents, proposes to furnish all pertinent labor, permits, machinery, tools, supplies and equipment necessary and to perform all work required to complete the Project for the unit prices for work in place for the items and quantities identified in the attached Solicitation Schedule.

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

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

1) **Proposer's State of Residence:** _____ (Refer to information in Section 5 Article 22.)

| | |
|--|---|
| Name And Address of Proposer: | Name and Title of Person Authorized to Sign Offer: E-Mail Address: Telephone Number: Fax Number: |
|--|---|

| | |
|-------------------|--------------|
| Signature: | Date: |
|-------------------|--------------|

| | |
|--|--|
| <u>Name, Address, E-mail Address, and Telephone Number</u> of Person authorized to conduct negotiations on behalf of Proposer. <i>(Applies to Request for Proposal only.)</i> | |
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PROJECT MANUAL

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|------------|--|
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TECHNICAL SPECIFICATIONS

The Construction Specifications for this Project are included in the contract documents. In the event a specification is not provided in the CONB plans and specifications, the current version of the *City of San Antonio Standard Specifications for Construction* (as amended and revised), and *TxDOT Standard Specifications 2014* will apply for this project where applicable.

STANDARD DETAILS & TECHNICAL SPECIFICATIONS:

The Standard Details for this Project are included in the construction drawings. In the event a standard detail is not shown, the current version of the *City of San Antonio Standard Details for Construction*, TxDOT Standard Details will apply for this project where applicable.

All traffic control to be submitted to the City by the Contractor. Shall be TMUTCD standards or from a licensed traffic engineer.

SECTION 3
INSTRUCTIONS FOR RESPONSE**03.01 AVAILABLE DOCUMENTS**

Proposals are due March 1st, 2022 at 3:00 P.M. (Central Time) at the City of New Braunfels - City Secretary's Office at 550 Landa Street, New Braunfels, Texas 78130. Solicitation documents may be obtained from:

- Purchasing staff at the New Braunfels City Hall
- the BidNet Direct website, <http://www.bidnetdirect.com/texas>
- the City of New Braunfels' website, <http://www.nbtexas.org/1175/Bid-Opportunities>

In the interest of security involving this Fiber Optic Network Routing Construction Project, the City is not releasing the associated fully engineered drawings without a Vendor Registration process. Any vendor wishing to bid on this proposal must sign a document confidentiality agreement, at which time they will receive a copy of all associated documents.

In order to obtain copies of the Construction Drawings and Technical Specifications, they must be accessed through our third-party provider, BidNet Direct. Website address is <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

03.02 PRE-PROPOSAL CONFERENCE – is not scheduled for this project**03.03 SUBMISSION OF PROPOSAL**

Companies responding to the CSP must follow the instructions below.

The statements which follow request information that the Evaluation Committee will utilize to evaluate the proposal. Each statement should be specifically addressed. Failure to respond to a statement may result in a proposal being deemed 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 **1 original master (marked original), 1 hardcopy, and 1 digital copy in a .pdf file format saved on a USB thumb drive**. Responses shall be tabbed and labeled as indicated for consistency.

1. **TAB 1 – Solicitation and Offer Form**; completed and signed.
2. **TAB 1 – Acknowledgment of Addenda**, if applicable
3. **TAB 2 – Cover Letter**: Name and address of the Proposer, as well as a brief description of the firm and its history
4. **TAB 3 – Executive Summary**: A brief summary highlighting the most important points of the proposal.
5. **TAB 4 – Cost Proposal Form** (Exhibit 1)
6. **TAB 5 – Vendor Qualifications, Experience, References**
7. **TAB 6 – Vendor Certifications** (Exhibit 4)

8. **TAB 7 – Approach, Plan and Schedule** as required in Section 4.10.and 4.11.
9. **TAB 8 – Acceptable Documentation**
 - Bond Form - Proposal Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal (Exhibit 2)
 - One copy of Certificate of Insurance completed and signed (Section 4.18).
 - Conflict of Interest (Section 4.19.13).
 - Certificate of Interested Parties; Form 1295 (Section 4.19.12). Requested with response.
10. **TAB 9 –** Required information indicated in Drawings, if applicable.
11. **TAB 10 –** Exceptions to Bid Specifications – exceptions must be document in this section.
12. ***Required after contract award – Performance, Payment and Maintenance Bonds –*** (Exhibit 2)

Proposal shall include all specified items in this section and be placed in an envelope, sealed and clearly identified on outside as a Proposal to Owner, with Proposer's name and address, and project name. Failure to submit Proposal in this manner may subject Proposer to disqualification. Proposal may be mailed or delivered (in person or by Express Mail or delivery service) to:

Delivery

Purchasing Department
City of New Braunfels
550 Landa Street
New Braunfels, TX 78130

Labeled

CSP 22-015 Fiber Optic Cable Construction Project
Project Due: March 1, 2022 3:00 PM (CST)

When sent by mail, Express Mail, or delivery service, sealed Proposal (marked as indicated above) shall be enclosed in an additional envelope clearly identified on outside as a Proposal to Owner with Proposer's name and address, Project name, and Proposal date and time. It is the sole responsibility of the Proposer to ensure timely delivery of 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 Proposer.

03.04 PROPOSALS AND COMPLIANCE PLANS RECEIVED AFTER THE DATE AND TIME STATED ABOVE WILL NOT BE ACCEPTED FOR EVALUATION.

An abstract of the amounts of the base Proposals and alternatives will be made available to Proposers after the awarding of Proposals.

03.05 AUTHORIZED CONTACT PERSONS

The persons listed below may be contacted for information regarding the Invitation for Proposals. If the Proposer contacts any other City employee, including Council Members and members of Boards and Commissions, the Proposer may be found in violation regarding Anti-Lobbying and Procurement.

| | | |
|--------------------------------------|-----------------|--------------|
| CONTRACT PROCUREMENT REPRESENTATIVE: | Barbara Coleman | 830-221-4389 |
|--------------------------------------|-----------------|--------------|

END OF SECTION

SECTION 4**GENERAL INFORMATION****ARTICLE 1 – PROJECT DESCRIPTION**

04.01.01 The City of New Braunfels seeks proposals from qualified vendors for the selection of a Fiber Optic Cable Construction Contractor to implement single mode optic infrastructure. The project is approx. 7 miles of fiber optic cabling, terminating at existing buildings and splice locations. The new fiber will provide a redundant backbone between City Hall and Main Public Library and include a fiber route segment for Fire Station 4 along Hwy 46.

- Engineer's Opinion of Probable Construction Costs for the project is: \$300,000

ARTICLE 2 – SCOPE OF WORK**04.02.01****A. SPECIFIC REQUIREMENTS:**

Any variance in any item must be specified clearly under the Exceptions to Proposer's Proposal by Proposer in order to have a valid Proposal. Any exceptions taken may be just cause for disqualification.

1. Project Description

This project scope includes construction and installation of fiber optic network cabling. Construction should include installation and termination of underground/above ground single mode fiber optic network between specified existing endpoints, as well as full testing of terminated fiber links.

Work includes, but is not necessarily limited to, the following:

- a. New Installation of outside plant and inside plant fiber optic cabling and terminations. Inside plant work consist of 48 strand terminations at City Hall and Fire Station 4.
- b. Over lashing of new fiber to existing fiber conductor, owned by New Braunfels Utility and City of New Braunfels.
- c. Installation of guy/anchors assemblies and guy stand cable.
- d. Installation of snowshoe assemblies/fittings.
- e. Installation of fiber in existing conduit owned by the City of New Braunfels and/or New Braunfels Utilities.
- f. Installation of conduit is required if existing conduit isn't sufficient for new fiber installation.
- g. Testing and certification of all terminated fibers, including documentation of test results
- h. Installation of weatherproof NEMA rated outdoor enclosures, and indoor fiber splicing enclosures.

2. Technical Services

The City of New Braunfels is providing fully engineered fiber design plans, digital and hardcopies once a confidentiality agreement is signed. The engineered design plans validate route data to complete each fiber segment. The fiber engineered designs are construction ready, providing construction level details including fiber strand counts. The contractor will adhere to the provided fiber engineering plans. The quantities shown on the plans and the bid documents are estimated quantities and based on the plan set and to be used for bidding purposes only. The contractor is responsible for determining actual quantities. The contractor shall be responsible for resolving any perceived discrepancies in the quantities prior to beginning any construction work. Any discrepancies, conflicts or issues must be brought to the attention of the City of New Braunfels staff. Deviations from the engineering plans due to manufacturing requirements or construction limitations shall be made in writing and approved by the City of New Braunfels staff.

The City of New Braunfels is currently in the permitting submittal phase for highway and railroad crossings. The City of New Braunfels will supply the approved permits to the fiber contractor. The fiber contractor must adhere to the crossing permits. All traffic control needed to perform all portions of the permitted work will be the responsibility and be coordinated by the fiber contractor.

The fiber optic network installation vendor shall provide the following services during the course of this project:

- a) Provide all project management services required to insure a successful and fully functional fiber optic network between the specified connections points.
- b) Provide bi-weekly fiber construction report updates.
- c) Provide the onsite services of a fiber optic service engineer to validate connectivity of all fiber links. Results of all testing shall be documented in writing.
- d) Contractor shall contact all underground utilities providers to locate existing infrastructure along the proposed fiber route.
- e) Contractor shall provide as built drawings and highlight deviations from the original drawings.

3. Onsite Services

Provide the onsite services of a field technician to show the New Braunfels IT Department each completed endpoint location.

4. Submittals

- a) Comply with other pertinent provisions of this specification
- b) Product data: Within 90 calendar days after the Contractor has received the Owner's Notice to Proceed, submit:
 - A printed and electronic copy of fiber termination diagrams as well as enclosure hardware specifications.

- Permits from all jurisdictions involved, excluding permits City of New Braunfels has indicated they will be responsible for as a part of this project.
5. System Description
- a) All underground fiber shall be installed in existing conduit.
 - b) Indoor installation in plenum spaces shall confirm to NFPA 262/90A standards
 - c) All work performed on New Braunfels Utility utility poles are subject to inspection and approvals by the utilities' company field technicians or engineers.
 - d) In addition to the typical warning labels indicating the presence of underground fiber optic cable, each marker pole shall have a note on two sides stating "48 HOURS BEFORE DIGGING IN THIS VICINITY CALL PHONE", then "www.nbtexas.org" on last line.
 - e) Splices shall conform to ANSI/TIA/EIA standards and have no splice loss greater than 0.05dB. At the conclusion of the fiber installation, test all cables and termination hardware from end to end for defects and to verify cable performance. Fiber segments shall be tested with certified OTDR equipment at 1310nm and 1550nm wavelengths. Supply the testing documentation and footage of each cable run, including OTDR trace for all fibers including the optical loss of each cable.
 - f) Coordinate with City of New Braunfels before initiating any tree trimming.

ARTICLE 3 – DESIGN ENGINEER

04.03.01 Brian Scott Meuth of M&S Engineering, 376 Landa Street, New Braunfels, TX 78130 is the Design Engineer for the Project.

ARTICLE 4 – CONTRACT TIMES

04.04.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

04.04.02 Days to Achieve Substantial Completion and Final Payment

The Work will be substantially completed within **150** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions and completed and ready for final payment in accordance with Section 6 Article 14.07 of the General Conditions within **180** calendar days after the date when the Contract Times commence to run. The substantial completion schedule will be further defined with the final contract.

04.04.03 Liquidated Damages

Contractor and Owner recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.01 above, plus any extensions thereof allowed in accordance with Article 12 of the Project Manual General Conditions. The parties also recognize the delays, expense,

and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 for completion and readiness for final payment until the Work is completed and ready for final payment.

04.05 CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 04.04 below:

- A. For all Work, at the unit prices stated in Contractor's Proposal.
- B. Installation costs should include the cost all required parts, tools, and personnel, including inside plant work terminations and patch panel equipment. It is expected the construction related to this proposal will be complete within the contract times. Costs must include finishing of the installation of the fiber optic cable into Fire Station 4 and City Hall as determined by the City of New Braunfels. As mentioned previously, Vendors must sign a confidentiality agreement prior to receiving the Engineering Drawings associated with this proposal. These drawings will provide vendors with the specific route and a required parts list, including parts specifications. The City of New Braunfels will require a cost and construction timeline for the entire project. The quantities shown on the plans and the bid documents are estimated quantities and based on the plan set and to be used for bidding purposes only. The contractor is responsible for determining actual quantities. The contractor shall be responsible for resolving any perceived discrepancies in the quantities prior to beginning any construction work.

04.06 PAYMENT PROCEDURES

04.06.01 Submittal and Processing of Payments

Contractor shall submit Applications for Payment in accordance with Article 14 of the Project Manual General Conditions and Exhibit 5, "Supplementary Conditions."

04.06.02 Progress Payments; Retainage

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein.

A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.2 of the General Conditions:

- i. 95% (percent) of Work completed (5% retained).
- ii. 95% (percent) of cost of materials and equipment not incorporated in the Work (5% retained).

04.06.03 Final Payment

Upon final completion and acceptance of the Work in accordance with Section 6, Article 14.7 of the Project Manual General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

04.07 DEVIATION FROM SPECIFICATION/ REQUIREMENTS

Please read the requirements thoroughly and be sure that your response complies with all requirements/specifications noted. Any variation from the solicitation requirements/specifications must be clearly indicated by letter, on a point-by-point basis, attached to and made a part of your response. If no exceptions are noted, and you are the successful respondent, the City will require that the good/service(s) be provided as specified.

04.08 CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the contract documents and the other related data identified in the bidding documents.
- B. Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, or performance of the work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the bidding documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations,

- explorations, tests, studies, or data are necessary for the performance of the work at the contract price, within the contract times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the work as indicated in the Contract Documents.
 - G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
 - H. Contractor has given the Purchasing Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City of New Braunfels is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

04.09 CONTRACT DOCUMENTS

Contents

- A. Contract Documents consist of the following:
 - 1. Contract Award Form & Agreement
 - 2. Project Manual (Sections 6 - 29), including the General Conditions
 - 3. Competitive Proposal
 - a. Solicitation and Offer Form
 - b. Performance Bond, Exhibit 2
 - c. Payment Bond, Exhibit 2
 - d. Warranty Bond, Exhibit 2
 - e. General Information
 - f. Terms and Conditions
 - g. Specifications as listed in the table of contents of the Project Manual
 - h. Addenda (if any)
 - i. Exhibits and Attachments (Cost Proposal Form, Prevailing Wage Schedule, Vendor Certifications, Supplementary Conditions, Supplementary Provisions, Plans, and Technical Specifications)
 - 4. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed
 - b. Work Change Directives
 - c. Contract Change Orders
- B. The documents listed in Paragraph 04.06 are attached to this contract except as expressly noted otherwise above.

- C. There are no Contract Documents other than those listed above in Section 04.06.
- D. The Contract Documents may only be amended, modified, or supplemented as provided therein.
- E. **ORDER OF PRECEDENCE.** In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (1) Change Orders, Work Change Directives, and written amendments to the Contract; (2) the Contract; (3) Supplemental Conditions, if any; (4) General Conditions; (5) the drawings, specifications, and addenda issued prior to the execution of the Contract; (6) Competitive Proposal, including Solicitation Offer and Award, Performance Bond, Payment Bond, General Information, Terms and Conditions, Exhibits and Attachments. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency.

04.10 PROPOSAL REQUIREMENTS

The following format is required for this RFP. Documentation provided must be specific and the data given must be clear and comprehensive. Documentation provided must pertain specifically to the entity that will submit Proposal for and construct the project, not an affiliated company, parent firm or entity. Failure to follow instructions may result in disqualification.

Provide the requested information in four sections as listed and detailed below.

- Section 1: Minimum Requirements
- Section 2: Financial and Technical Resources.
- Section 3: Experience and References.
- Section 4: Proposed Approach to the Work.

1. Requested Information/Proposal Format

Contractors desiring to qualify for the work must provide all information described in this section including complete and explicit answers to the questions. Do not provide tables and generic product information and expect the reader to count and/or interpret responses. Vague and unresponsive answers and missing information will be considered negative responses.

Section 1 - Minimum Requirements

Provide the following information

- A. All work shall be performed and completed directly by the chosen vendor. No subcontractors, unless specifically approved by the City of New Braunfels IT Department, will be a part of this construction.
- B. Please include all required forms and documentation in this section as mentioned throughout this RFP this should include (but not be limited to) bonds and proof of insurance.
- C. The firm submitting shall provide documentation to show that they are or can

become licensed as a Contractor in the City of New Braunfels and Comal County, if needed.

- D. The Firm shall be a certified fiber optic integrator. Provide documentation of your Fiber Optic Certifications. FOA certification preferred.
- E. At the completion of the project, provide as-built fiber construction documentation/drawings.
- F. Warranty – Include the following warranty information:
 - 1. Warranty length
 - 2. Location of the nearest warranty service location.
 - 3. What is covered by the warranty?

Section 2 - Financial and Technical Resources

Provide the following information in tabbed sections as follows:

- 1. Personnel Resources.
 - a) Provide a company organizational chart and the total number of employees. Provide a project organizational chart accompanied with a written description that includes specific people and specific responsibilities of each stakeholder including subcontractors and Owner. Provide evidence that your staff includes more than one person with directly applicable experience in the design, installation, and testing of Fiber Optic network cabling.
 - b) Does the Company employ qualified fiber optic Service Technicians that can certify and repair fiber optic network terminations? Please provide specifics on their assigned company “home” office location.
 - c) Provide all certification/qualifications showing the ability to perform this project within the electric service area on existing utility poles. Fiber will be lashed/installed within the electric service area of the utility poles, below the neutral power lines. Contractor will be required to be certified and highly experienced to work in the electric service area of the utility lines.
- 2. Support, Service and Maintenance Capabilities.

Describe the services available from your firm and location of personnel for fiber optic installation and maintenance. Identify projects where similar types of services have been provided. Include the Owner’s company, project name, contact person, and phone number of the Owner’s organization. Indicate how your firm could provide long-term maintenance and support services including realistic response times and location where support will originate.

Section 3 - Experience and References

The supplier must have a demonstrable track record in performing installations of this level of complexity. Provide the following information in separately tabbed subsections:

- 1. References and Project Experience
 - A. A list of at least 3 similar or larger fiber optic installation projects completed in the last five years, not including municipalities or

municipal utilities, including the following:

- Project name and location.
 - Contract amount.
 - Completion date.
 - Name and current phone number of end user reference.
- B. A list of at least 3 similar or larger fiber optic installation projects completed in the last five years, including municipalities or municipal utilities, including the following:
- Project name and location.
 - Contract amount.
 - Completion date.
 - Name and current phone number of end user reference.

Projects used as references should exhibit past experience in the design, construction, installation, testing and certifying of aerial and underground fiber optic networks, comparable to the size, type, and complexity to the proposed project.

As much of this fiber installation will be lashing to existing fiber conductor located within the service area of utility poles, below the neutral power lines, references should include projects of similar scope.

2. Have any penalties, liquidated damages, liens, claims, or stop notices been filed on any project in progress or completed during the last five years? If so, identify the project, contract date, type of claim/lien, etc. and comment on the reasons.
3. Identify the largest Fiber Optic network installation (in dollar amount) bonded by your company, and state the bonded value, if possible.
4. Submit samples of as-built drawings of similar underground fiber optic network projects, including depth measurements for underground fiber.

Section 4 - Project Timeline and Approach

Provide the following information describing your project understanding and approach.

1. Represent a potential plan and schedule for performing the work for each project.
 - a) Baseline Schedule – Provide a proposed baseline schedule in Microsoft Projects for this Work defining critical path.
 - b) Schedule Strategies – If applicable, provide strategies which are included in the proposal to minimize delays and areas for possible time savings.
2. Describe how you will perform the work on this project.
Include a description of how your firm will organize, mobilize, implement this project, and quality control procedures. This is your management approach that will show your understanding of the key issues and steps required for implementation. Indicate issues and potential solutions that will need to be addressed to ensure project success.
3. Schedule and Cost Control Methods.
Describe your methods and tools used to monitor and control project schedules and costs. Please include a sample timeline and estimated number of days to complete this project.

4. Provide Network Validation and Acceptance Testing Plan.
5. Create and submit labeling system for the fiber cabling installation. The cable labeling shall clearly identify all components of the fiber installation.
6. Pricing
Please include detailed pricing for the proposed project. Each section, as labeled per the City’s provided engineering drawings, should have pricing listed separately. Please include price per linear foot (or other, indicated, unit of measure) for additional fiber lines. Please include any mobilization or startup costs as separate line items.

04.11 COMPETITIVE PROPOSALS

This proposal is presented in accordance with Section 2269.151 Texas Government Code and City requirements.

- A. The City of New Braunfels will evaluate proposals according to the process and criteria listed below. The City of New Braunfels reserves the right to consider all other pertinent factors in addition to the proposal in making its final decision. Each of the criteria has been assigned an appropriate weight by the City of New Braunfels. Following an analysis and valuation of the Proposals, ranking of the Proponents will be made based upon the evaluation criteria. In the event of a tie in the rankings, the City of New Braunfels will break the tie based upon the City of New Braunfels's determination of which Proposal will provide the best value to the City of New Braunfels. Subjective judgment on the part of the City of New Braunfels is implicit in the criteria evaluation process. After opening and ranking, award may be made on the basis of the original proposal as is, without discussion, clarification or modification, or the City of New Braunfels may discuss with the selected Proponent, offers for cost adjustment and other elements of the Proposal.
- B. Any Proposal may be considered unacceptable if the City of New Braunfels determines it fails to provide adequate technical and price information as specified in this Instruction to Proponents.
- C. Evaluation Criteria: The proposals submitted in response to this competitive sealed proposal (CSP) will be reviewed by a committee assembled by the City of New Braunfels. This committee will evaluate the proposals based on, but not limited to, the following criteria.

The following criteria will be used by the evaluation committee to evaluate the proposal:

| Percent | Description |
|----------------|--|
| 50 | Cost Proposal Price |
| 20 | Proposed Project Timelines and Approach |

| | |
|-----------|---|
| 20 | Experience and Qualifications |
| 10 | Availability in Region for Warranty Work |

1. Cost Proposal – (50 Points)

a) The Owner will consider the total contract cost as part of its evaluation.

2. Proposed Project Timeline - Plan and Schedule – and Approach – (20 Points)

3. Relevant Experience and Qualifications – (20 Points)

Experience as a **general contractor** with specific experience of the same or similar type, size, nature and class as the project being proposed.

- a) Minimum requirements and experience is indicated in 4.10 Section 2-3. Consideration will be given to the number of years the Proponent has been in business.
- b) Consideration will be given to projects which are:
- At least 3 similar or larger fiber optic installation projects complete or substantially **complete**, as a Prime Contractor or Sub-Contractor within the last five years, **not including municipalities or municipal utilities**.
 - At least 3 similar or larger fiber optic installation projects complete or substantially **complete**, as a Prime Contractor or Sub-Contractor within the last five years, **including municipalities or municipal utilities**.
 - At a cost in excess of \$500,000 that your company is **presently** constructing as a Prime Contractor.
- c) This includes the qualifications, reputation, capability, safety record, and contractors past relationship and experience with the City and and/or other public entities.
- Proposer must include a list of all proposed key personnel as referenced in 4.10.
 - If you are using a sub-contractor for this work, provide the sub-contractor's specific experience in general road and sidewalk construction, underground utilities, as well as construction of TAS-complaint Ramps and Walkways of the same or similar type, size, nature and class as the project being proposed.
 - The Prime Contractor or Sub-Contractor on projects with CONB as the Owner.
- d) Provided the financial and technical resources requested in 4.10 Section 2.

- e) **Other Considerations:** The City reserves the right to consider historical information and facts, whether gained from the proposal, references, or any other source, in the evaluation process. The City further reserves the right to consider a submitter's background, personnel, experience, financial and other references, management practices, exceptions to the CSP or subsequent contract, and any working relationships, past or present, a submitter may have with its other clients.

4. Availability in Region for Warranty Work (10 Points)

- Include the following warranty information Warranty length
- Location of the nearest warranty service location.
- What is covered by the warranty?

5. Financial Capacity to perform the work – (pass/fail)

- a) Provide evidence of financial capability and stability which must be appropriate to the size and scope of this project.

- b) List bank references, including contact name and title, address and phone of contact person.

- a) This is a Pass or Fail. Any Proposer receiving a score of "Fail" will be automatically disqualified.

Total Points Possible: 100 Points

- D. **Presentations/Interviews:** After an initial review and compilation process, the city may ask for a presentation/interview of services from selected companies or individual to clarify and to develop a comprehensive assessment of the submissions. Interviews will provide a maximum of 10 additional points, per Street Project, as applicable.

F. Proposed Project Schedule:

| DATE | MILESTONE |
|--------------------------------|--|
| February 4, 2022 | City of New Braunfels Website: http://www.nbtexas.org/2694/Active-Solicitations CSP issued on https://www.bidnetdirect.com/texas/city-of-new-braunfels |
| February 18, 2022 | Deadline for questions and requests for clarification |
| TBD | Release of Addendum – Answers to questions |
| March 1, 2022 3:00 pm (CST) | Competitive Sealed Proposal (CSP) submission deadline & time |

| | |
|------------|--|
| March 2022 | Anticipated approval, and award of Contract, by City Council |
|------------|--|

04.12 GENERAL CONTRACTOR REGISTRATION

Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained from the Planning & Community Development department, Building Division on the City's website, www.nbtexas.org. In addition to topics such as permitting and fees, et cetera, the "Forms and Applications" hyperlink has links to the required "**Contractor's Registration Packet**" and "**Sub-Contractor Registration**" forms. Additional information may be provided by calling the Building Division at (830) 221-4060.

04.13 PROPOSAL GUARANTY

All Proposals shall be accompanied by an acceptable Proposal Guaranty in an amount of not less than five percent (5%) of the total Proposal Amount, as specified in Terms and Conditions, Section 5, Article 5.

04.14 CONTRACT SECURITY

The required Performance and Payment Bonds must be delivered to Owner not later than 10 days after Notice of Award is issued to Contractor. Refer to Exhibit 2 for the City Bond Forms.

04.15 PERFORMANCE AND PAYMENT BONDS

When Performance or Payment Bonds are required, each shall be issued in equal to the Contract Amount as security for the faithful performance or payment of all Contractors' obligations under the Contract Documents.

04.16 WARRANTY BOND

Not Required for this Project.

04.17 MINIMUM WAGES AND PREVAILING WAGE RATES

Minimum wage rates have been established and are specified in Section 5, Articles 23 and 24, "Wage Rates."

Refer to Exhibit 3, "Prevailing Wage Schedule"

04.18 INSURANCE AND LIABILITY COVERAGE

During the period of this contract, Contractor shall 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 shall:

- A. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- B. Provide City of New Braunfels a waiver of subrogation.
- C. Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- D. Provide the Purchasing Representative at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

Submit a certificate of insurance reflecting coverage as follows:

- a. Automobile Liability:

| | | |
|-------------------------------|---|----------------|
| Bodily Injury (Each person) | - | \$1,000,000.00 |
| Bodily Injury (Each accident) | - | \$1,000,000.00 |
| Property Damage | - | \$1,000,000.00 |
- b. General Liability (Including Contractual Liability):

| | | |
|-----------------|---|----------------|
| Bodily Injury | - | \$1,000,000.00 |
| Property Damage | - | \$1,000,000.00 |
| Aggregate | - | \$2,000,000.00 |
- c. Excess Liability:

| | | |
|---------------|---|----------------|
| Umbrella Form | - | \$5,000,000.00 |
|---------------|---|----------------|
- d. Worker's Compensation:

| | | |
|---|---|----------------|
| | - | Statutory |
| <u>Or Employer's Liability Insurance:</u> | - | \$1,000,000.00 |
| Each Accident | - | \$1,000,000.00 |
| Disease each employee | - | \$1,000,000.00 |
| Policy Limit | - | \$1,000,000.00 |

04.19 MISCELLANEOUS

04.19.01 Terms

Terms used in this Agreement will have the meanings stated in the Project Manual General Conditions, Section 6, Article 1 and Section 9 (Definitions and Terminology) and as elsewhere defined throughout the Contract Documents.

04.19.02 Assignment of Contract

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

04.19.03 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal

representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

04.19.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

04.19.05 Contractor's Certifications

Contractor certifies in Exhibit 4, "Vendor Certifications", it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph:

- 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 bidding process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made
 - 1. to influence the bidding process or the execution of the Contract to the detriment of Owner,
 - 2. to establish Bid 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 Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices 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 bidding process or affect the execution of the Contract.

04.19.06 SB 13 Contracts with Companies that Boycott Energy Companies

Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

04.19.07 SB 19 Contracts with Companies that Discriminate Against Firearm Industry

Contractor verifies that 1 it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or 2 the verification required by Section 2274 002 of the Texas Government Code does not apply to the contract.

If Contractor is a company with 10 or more full time employees and if this Agreement has a value of at least 100 000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274 it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

04.19.08 Certification of House Bill 89

Contractor certifies in Exhibit 4, "Vendor Certifications", it has not boycotted Israel currently and will not boycott Israel during the term of the contract, Pursuant to Section 2270.0001, Texas Government Code.

04.19.09 Indemnity Against Loss

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, hold harmless and defend City of New Braunfels, their officers, agents and employees from any loss, damage, liability or expense, including reasonable attorney's fees, on account of damage to property and injuries, including death, to all persons, including employees of the Contractor or any of its consultants, which may arise from any negligent act, error or omission, on the part of the Contractor, its employees, agents, and consultants, pursuant to this contract.
- B. The City does not assume any liability to third persons, nor will the City reimburse the Contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder, and Contractor further agrees to provide the defense for, and indemnify and hold harmless City from any and all claims, suits, causes of action, and liability, arising in connection with this contract.

04.19.10 Anti-Lobbying and Procurement

Lobbying activities or representations by the Bidder are prohibited between the date that the solicitation is issued and the date of contract execution.

During a no-contact period, a bidder shall make a representation only through the authorized contact person.

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

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

04.19.11 Safeguarding of Information and Data

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

04.19.12 Certificate of Interested Parties (Form 1295)

Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission (TEC) found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed **Certificate of Interested Parties (Form 1295)** to the City before the City may enter into a contract with that business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Standard Filing Process: Form 1295 is accessible at, and must be completed online, at the following web address: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

A business entity must enter the required information as directed on Form 1295 and then print a copy of the completed form after it has been submitted online. It is important to note that the information that is required in 'Certification Number' and 'Date Filed' fields in the 'Certification of Filing' box on the form will not be generated until the form has been submitted, not saved. An authorized agent of the business entity must then complete the information required in the "Unsworn Declaration" field of the form and sign the printed copy of the form, containing the unique Certification Number and filing date. The completed and signed Form 1295 must be filed with the governmental body or state agency with which the business entity is entering into the contract; the governmental body or state agency will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website.

Solicitation Document: If a completed Form 1295 is requested in a solicitation document issued by the City, Respondent shall reference the City's solicitation number in Box 3 of the form as a contract number is not generated until the award of a contract by City Council. Respondents must submit the original signed form with their response to the solicitation. The City will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website after the contract has been awarded.

04.19.13 Requirement for Disclosure of Conflict of Interest

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 proposals or bids, 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 proposal **in addition to** submitting a completed Form CIQ to the office of the City Secretary located at 550 Landa Street; New Braunfels, Texas 78130.

By law, Form CIQ must be filed with the City Secretary no later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

END OF SECTION

TERMS AND CONDITIONS

ARTICLE 1 DEFINED TERMS

05.01.01 Terms used in these Terms and Conditions, which are defined in the General Conditions of the Contract Documents, have the meanings assigned to them in the General Conditions. The term "Proposer" means one who submits a Proposal directly to Owner, as distinct from a sub-Proposer, who submits a proposal to a Proposer. The term "Successful Proposer" means the lowest, qualified, responsible and responsive Proposer to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Proposal Documents" includes the Advertisement or Invitation to Proposal, General Terms and Conditions, the Proposal Form, and the Contract Documents (Including all Addenda issued prior to receipt of Proposals).

ARTICLE 2 COPIES OF PROPOSAL DOCUMENTS

05.02.01 Complete sets of the Proposal Documents in the number and for the sum stated in the Advertisement or Competitive Sealed Proposal may be obtained from Owner. The sum for the Project Documents is not refundable.

05.02.02 Complete sets of Proposal Documents must be used in preparing Proposals; neither Owner nor Design Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

05.02.03 Owner, in making copies of Proposal Documents available on the above terms, do so only for the purpose of obtaining Proposals on the Work and do not confer a license or grant for any other use.

05.02.04 Complete sets of Proposal Documents may be downloaded at <http://www.bidnetdirect.com/texas>, unless otherwise notified.

ARTICLE 3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

05.03.01 It is the responsibility of each Proposer before submitting a Proposal, to: (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Proposer's observations with the Contract Documents; and (e) notify the City of all conflicts, errors or discrepancies in the Contract Documents.

05.03.02 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others and Owner does not assume responsibility for the accuracy of completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

05.03.03 On request in advance, Owner will provide each Proposer access to the site to conduct such explorations and tests as each Proposer deems necessary for submission of a Proposal. Proposer shall fill all holes, clean up, and restore the site to its former condition upon

completion of such explorations. The Proposer shall be responsible for the expenses associated with such tests and explorations.

05.03.04 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. **All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor.** Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

05.03.05 The submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of this Article, that without exception the Proposal is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 4 INTERPRETATIONS AND ADDENDA

05.04.01 All questions about the meaning or intent of the Contract Documents are to be directed to Purchasing Representative. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda emailed, mailed or delivered to all parties recorded by Purchasing Representative as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

05.04.02 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner.

ARTICLE 5 PROPOSAL GUARANTY

05.05.01 All Proposals shall be accompanied by a proposal guaranty in an amount of not less than five percent (5%) of the total Proposal. If the total Proposal amount is \$100,000 or less, Proposer has the option of providing a cashier's or certified check, made payable to City of New Braunfels, or a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to Owner. If the total Proposal amount exceeds \$100,000, the only acceptable proposal guaranty will be a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to Owner.

05.05.02 Proposal guaranty accompanying the Proposal of the apparent low Proposer will be retained until Contract is awarded and successful Proposer executes Contract and furnishes required bonds and insurance, after which proposal guaranty will be returned to the Proposer. Proposal guaranty accompanying the second lowest Proposer will be retained until Contract is awarded. All other proposal guaranties will be returned after Proposal certification.

ARTICLE 6 PERFORMANCE AND PAYMENT BONDS

05.06.01 When performance and/or payment bonds are required, each shall be issued in an amount equal to the Contract Amount as security for the faithful performance and/or payment of all Contractors' obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by Owner pursuant to applicable law.

ARTICLE 7 WARRANTY BOND

05.07.01 Warranty Bond is not required for this solicitation.

ARTICLE 8 CONTRACT TIME

05.08.01 The number of days within which, or the dates by which, the Work is to be completed and ready for final payment (the Contract Time) are set forth in the Agreement.

ARTICLE 9 LIQUIDATED DAMAGES

05.09.01 Contractor and Owner recognize that time is of the essence Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.01 of the General Information, plus any extensions thereof allowed in accordance with Article 12 of the Project Manual General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 of the General Information for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 of the General Information for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 10 SUBSTITUTE AND "OR-EQUAL" ITEMS

05.10.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or substitute or "or-equal" materials and equipment approved by Owner and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Owner as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Owner at least 7 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.5 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Owner's decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed item, such approval

will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 11 SUBCONTRACTORS, SUPPLIERS AND OTHERS

05.11.01 If the Contract Documents require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Proposer, and any other Proposer so requested, shall within five days after Proposal opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Proposer to submit a substitute. If the Substitute will cause the cost of the work to increase the Owner will agree to increase the contract price by the corresponding increase.

05.11.02 If apparent Successful Proposer declines to make any such substitution, Owner may award the Contract to the next ranked Proposer that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Proposal security of any Proposer. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner subject to revocation of such acceptance after the Effective Date of the Agreement.

ARTICLE 12 PREPARATION OF PROPOSAL

05.12.01 The Proposal Form is included with the Proposal Documents.

- A. All blanks on the Proposal Form shall be completed. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form. A Proposal price shall be indicated for each proposal item or unit price listed therein. In the case of optional alternatives, the words "No Proposal," "No Change," or "Not Applicable" may be entered.
- B. All names shall be printed in ink below the signatures.
- C. The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- D. Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.
- E. 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.

ARTICLE 13 SUBMISSION OF PROPOSAL

05.13.01 Each Proposal, completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity shall be submitted in accordance with Section 3.03.

ARTICLE 14 BASIS OF PROPOSAL; COMPARISON OF COSTS

05.14.01 Unit Price

1. Proposers shall submit a Proposal on a unit price basis for each item of Work listed in the Proposal Form.
2. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price.
3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.14.02 Lump Sum Price

1. Proposers shall provide proposal items on a lump sum price for each item of Work listed as such in the Proposal Form.
2. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding lump sum price.
3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the lump sum prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 15 MODIFICATION AND WITHDRAWAL OF PROPOSALS

05.15.01 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals.

05.15.02 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 shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall 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. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

05.15.03 If, within twenty-four hours after Proposals are opened, and Proposer files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal and the Proposal security will be returned. Thereafter, that Proposer will be disqualified from further proposal on the work to be provided under the Contract Documents.

ARTICLE 16 OPENING OF PROPOSALS

05.16.01 Proposals will be opened, and base price will be read aloud. Other content will not be disclosed to competing Proposers and the contents will be kept confidential during negotiations. Until the negotiations are completed, only the number, identity and proposed price of the Proposers submitting Proposals will be made available to the public.

ARTICLE 17 PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

05.17.01 All Proposals will remain subject to acceptance for one-hundred twenty (120) days after the day of the Proposal opening, but Owner may, in its sole discretion, release any Proposal and return the Proposal security prior to that date.

ARTICLE 18 AWARD OF CONTRACT

05.18.01 Owner reserves the right to reject any and all Proposals, to waive any and all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Proposer, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Proposals. Also, Owner reserves the right to reject the Proposal of any Proposer if Owner believes that it would not be in the best interest of the Project to make an award to that Proposer, whether because the Proposal is not responsive, or the Proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.18.02 In evaluating Proposals, Owner will consider the qualifications of the Proposers, whether or not the Proposals comply with the prescribed requirements, and such alternatives, and other data, as may be requested in the Proposal Form or prior to the Notice of Award.

05.18.03 If the Contract is to be awarded, it will be awarded to the best value Proposer whose evaluation by Owner indicates to Owner that the award will be in the best interest of the Project.

05.18.04 If the contract is to be awarded, Owner will give the Successful Proposer a Notice of Award within one-hundred twenty (120) days after the day of the Proposal opening.

05.18.05 Owner reserves the right to increase the value of the contract by adding alternatives described in the Proposal.

05.18.06 Causes for Rejection; Waiver of Irregularities; Disqualification - In any case, of ambiguity or lack of clarity in stating the prices in the proposal, the Owner will use the construction most advantageous to it or reject the proposal.

05.18.07 Other causes for the Owner to disqualify a proposer or reject its proposal include:

- a) The proposal has any omission, alteration of form, addition or condition not called for, or unreasonable or unbalanced unit prices.
- b) The proposal is incomplete or is not accompanied by an acceptable proposal guaranty.
- c) More than one proposal is submitted by the proposer.
- d) There is evidence of collusion among proposers.
- e) There is evidence of unsatisfactory performance, default or litigation with an owner by the proposer under a previous contract, either with this Owner or with another owner, including work by the proposer as a subcontractor.
- f) There is evidence that the proposer is behind schedule, in arrears in payment to an employee, subcontractor or material supplier, in default, or in litigation with an owner under an existing contract.
- g) The Owner determines that the proposer is not responsible because there is evidence that the proposer does not have sufficient qualifications (including without limitation, lack of experience, poor safety record, insufficient personnel, equipment, financial resources, or any other attribute) to assure the satisfactory completion of the Project.
- h) The Owner determines that the proposer has been convicted of a criminal offense committed in Texas involving fraud, theft, bribery, kickbacks or unlawful gifts to a public official if the conviction occurred within three years immediately preceding either the date of submission of your bid, the submission of your statement of proposer's qualifications or the advertised contract award date.
- i) More than 50 percent of the work performed by subcontractors to the Contractor.
- j) The proposer does not meet the minimum experience qualifications established in the Statement of Proposer's Qualifications.

05.18.09 Each proposer by submission of a proposal waives any claims it has or may have against the Owner, the Engineer, its sub-consultants and their employees and any other

consultants, and any trustees, officers, and employees of Owner, connected with or arising out of the proposal administration, proposal evaluation, recommendation for Contract award, the award of the Contract and the rejection of any proposals.

ARTICLE 19 CONTRACT SECURITY

05.19.01 The required performance and payment Bonds must be delivered to Owner not later than 10 days after Notice of Award.

ARTICLE 20 SALES TAX

05.20.01 The Proposer shall investigate all statutory requirements for the payment of sales taxes and shall include the cost of any such payments in the Proposal prices of his proposal.

05.20.02 The Proposer's attention is directed to Chapter 151 of the Tax Code of the State of Texas. This section provides that all items used or consumed in direct pursuance of this Contract can be purchased free of State of Owner sales tax since the project is being performed for an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas.

ARTICLE 21 LAWS AND REGULATIONS

05.21.01 The Proposer's attention is directed to the fact that all applicable Texas state laws, municipal ordinances and rules and regulations of all authorities having jurisdiction over the work to be performed and services to be provided will apply to the Contract through out, and they will be deemed to be included in the Contract the same as if herein written out in full.

ARTICLE 22 RESIDENT PROPOSERS

05.22.01 Texas provides no advantage to resident Proposers in the award process. However, offers from another state where that state favors their residents will be evaluated by adding the same differential to the proposal that would be required for a non-resident proposal to be awardable in their resident state. For example, how much lower a Texas firm must be in that state than one of their resident proposals in order to be the awardee.

05.22.02 Pursuant to Local Government Code §271.9051, the City of New Braunfels has a local preference resolution 2009-R61. This resolution authorizes the municipality to enter into a contract with the lowest Proposer or the Proposer whose principal place of business is in the City of New Braunfels if that local Proposer is within five percent of the lowest proposal price received from a Proposer who is not a resident and offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract award; including the employment of residents of the municipality and increased tax revenues to the municipality and total amount of the contract is less than \$100,000. This provision does not prohibit the City of New Braunfels from rejecting all proposals.

ARTICLE 23 GENERAL CONTRACTOR REGISTRATION

05.23.01 Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained from the Planning & Community Development department, Building

Division on the City's website, www.nbtexas.org. In addition to topics such as permitting and fees, et cetera, the "Forms and Applications" hyperlink has links to the required "**Contractor's Registration Packet**" and "**Sub-Contractor Registration**" forms. Additional information may be provided by calling the Building Division at (830) 221-4060. Contractor must be registered with the City prior to construction start.

ARTICLE 24 PREVAILING WAGES

05.24.01 Proposer must comply with all requirements of the prevailing wage statute, Government Code chapter 2258 and Davis-Bacon and Related Acts for non-Federal contracts.

05.24.02 Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.

<https://www.wdol.gov/dba.aspx> Exhibit 3; "Prevailing Wage Schedule"

05.24.03 Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to Owner rates and classification proposed for use, for approval, prior to performance of the Work.

ARTICLE 25 EMPLOYMENT REQUIREMENTS AND WAGE RATES

05.25.01 This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

05.25.02 The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

05.25.03 Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

05.25.04 Contractor shall keep certified payrolls which will be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owner as may be required upon request or for audit at completion of the job. Accurate records shall show the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Owner.

05.25.05 According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that

the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

05.25.06 Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

05.25.07 Pursuant to Texas Revised Civil Statutes, Article 4413(31), Contractor shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five years.

ARTICLE 26 RELEASE OF INFORMATION

05.26.01 Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been awarded. Owner shall not release information relative to this Solicitation during the proposal evaluation process or prior to contract award, except as otherwise required by law.

ARTICLE 27 DISCLOSURE OF PROPRIETARY INFORMATION

05.27.01 All materials submitted to Owner become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Proposer does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked "proprietary" at time of submittal.

Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

05.27.02. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. Respondents and Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract; (2) promptly provide to the Owner any contracting information related to the Contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the Contract, either:

- (i) provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

05.27.03 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Request for Proposals and Contract and the vendor agrees that the Contract can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 28 OTHER TERMS OF AGREEMENT

05.28.01 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

05.28.02 Governing Law

The Contract shall be governed by the law of the state of Texas without regard to its conflict of law principles.

05.28.03 Venue

This Agreement is entered into and performed in Comal County, Texas, and the Contractor and the Owner agree that mandatory venue for any legal action related to this Contract shall be in the state District Courts of Comal County, Texas.

END OF SECTION

Exhibit 1

COST PROPOSAL FORM

Refer to Exhibit 1 attached as an Excel Form

BID BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF _____ §

That we, _____, as Principal herein, and _____, a corporation organized and existing under the laws of the State of _____, and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the **City of New Braunfels, Texas**, located in **Comal County, Texas**, Obligee herein, in the sum of _____ Dollars (\$_____) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Proposal, dated the ____ day of _____, 20____, which is hereto attached and made a part hereof for all purposes, for the **Fiber Optic Cable Construction Project.**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, if the said Principal shall not withdraw said Proposal within the period specified therein after the opening of same, or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into written Contract with the Obligee in accordance with the Proposal as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, or in the event of the withdrawal of said Proposal within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Proposal and the amount for which the Obligee may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Bidding Requirements, Contract Forms and Conditions of the Contract
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IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

ATTEST:

Secretary

(S E A L)

Witness as to Surety

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Name: _____
Attorney in Fact

Address: _____

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

PERFORMANCE BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF _____ §

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety’s state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels, Texas, a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligee herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond]) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the _ day of _____, 20____, herein referred to as “the Contract” and incorporated herein and made a part hereof for all purposes, for the construction of the following project: **Fiber Optic Cable Construction Project**

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal’s failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within seven (7) calendar days from receipt of Obligee’s notice of Contractor’s default, commence and thereafter complete performance of Contractor’s obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and

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any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Name: _____

Attorney in Fact

Address: _____

ATTEST:

Secretary

(S E A L)

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Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

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

By: _____

Title: _____

Date: _____

PAYMENT BOND

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF _____ §

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety’s state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels, Texas, a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligee herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond]) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the _____ day of _____, 20____, which contract is hereby referred to herein as “the Contract” and is incorporated herein to the same extent as if copied at length, for the following project:

Fiber Optic Cable Construction Project.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall directly or indirectly timely make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be void; otherwise, to remain in full force and effect. *This obligation may be enforced by the Obligee in the event of bankruptcy or default by Principal in payments to suppliers of labor or materials in the prosecution of the work under the Contract, in either of which events the Surety shall make such payments as Principal has failed to pay and as may be required to complete the work under the contract.* The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in

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accordance with the provisions of said statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

ATTEST:

Secretary

(S E A L)

Witness as to Surety

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Name: _____
Attorney in Fact

Address: _____

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

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Approved as to Form:

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

By: _____

Title: _____

Date: _____

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PREVAILING WAGE RAES AND PAYROLL REPORTING
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WAGE RATE DETERMINATION
COUNTY NAME: COMAL

Wages are based on DOL General Decision:

TX TX20200007- HEAVY AND HIGHWAY CONSTRUCTION

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.
- <https://sam.gov/>

PREVAILING WAGES

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.
<https://sam.gov/>

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to owner rates and classification proposed for use, for approval, prior to performance of the Work.

EMPLOYMENT REQUIREMENTS AND WAGE RATES

This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

Contractor and each Subcontractor shall keep certified payrolls be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owner as may be required upon request or for audit at completion of the job.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto. hereto.

Bidding Requirements, Contract Forms and Conditions of the Contract
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"General Decision Number: TX20210007 01/01/2021

Superseded General Decision Number: TX20200007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| | |
|---------------------|------------------|
| Modification Number | Publication Date |
| 0 | 01/01/2021 |

* SUTX2011-006 08/03/2011

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| | Rates | Fringes |
|---|----------|---------|
| CEMENT MASON/CONCRETE FINISHER (Paving and Structures)..... | \$ 12.56 | |
| ELECTRICIAN..... | \$ 26.35 | |
| FORM BUILDER/FORM SETTER Paving & Curb..... | \$ 12.94 | |
| Structures..... | \$ 12.87 | |
| LABORER Asphalt Raker..... | \$ 12.12 | |
| Flagger..... | \$ 9.45 | |
| Laborer, Common..... | \$ 10.50 | |
| Laborer, Utility..... | \$ 12.27 | |
| Pipelayer..... | \$ 12.79 | |
| Work Zone Barricade Servicer..... | \$ 11.85 | |
| PAINTER (Structures)..... | \$ 18.34 | |
| POWER EQUIPMENT OPERATOR: Agricultural Tractor..... | \$ 12.69 | |
| Asphalt Distributor..... | \$ 15.55 | |
| Asphalt Paving Machine..... | \$ 14.36 | |
| Boom Truck..... | \$ 18.36 | |
| Broom or Sweeper..... | \$ 11.04 | |
| Concrete Pavement Finishing Machine..... | \$ 15.48 | |
| Crane, Hydraulic 80 tons or less..... | \$ 18.36 | |
| Crane, Lattice Boom 80 tons or less..... | \$ 15.87 | |
| Crane, Lattice Boom over 80 tons..... | \$ 19.38 | |
| Crawler Tractor..... | \$ 15.67 | |
| Directional Drilling Locator..... | \$ 11.67 | |
| Directional Drilling Operator..... | \$ 17.24 | |
| Excavator 50,000 lbs or Less..... | \$ 12.88 | |
| Excavator over 50,000 lbs...\$ | 17.71 | |
| Foundation Drill, Truck Mounted..... | \$ 16.93 | |
| Front End Loader, 3 CY or | | |

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| | |
|------------------------------|--------------|
| Less..... | \$ 13.04 |
| Front End Loader, Over 3 CY. | \$ 13.21 |
| Loader/Backhoe..... | \$ 14.12 |
| Mechanic..... | \$ 17.10 |
| Milling Machine..... | \$ 14.18 |
| Motor Grader, Fine Grade.... | \$ 18.51 |
| Motor Grader, Rough..... | \$ 14.63 |
| Pavement Marking Machine.... | \$ 19.17 |
| Reclaimer/Pulverizer..... | \$ 12.88 |
| Roller, Asphalt..... | \$ 12.78 |
| Roller, Other..... | \$ 10.50 |
| Scraper..... | \$ 12.27 |
| Spreader Box..... | \$ 14.04 |
| Trenching Machine, Heavy.... | \$ 18.48 |
| Servicer..... | \$ 14.51 |
| Steel Worker | |
| Reinforcing..... | \$ 14.00 |
| Structural..... | \$ 19.29 |
| TRAFFIC SIGNAL INSTALLER | |
| Traffic Signal/Light Pole | |
| Worker..... | \$ 16.00 |
| TRUCK DRIVER | |
| Lowboy-Float..... | \$ 15.66 |
| Off Road Hauler..... | \$ 11.88 |
| Single Axle..... | \$ 11.79 |
| Single or Tandem Axle Dump | |
| Truck..... | \$ 11.68 |
| Tandem Axle Tractor w/Semi | |
| Trailer..... | \$ 12.81 |
| WELDER..... | \$ 15.97 |

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

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Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

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Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter

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* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

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.: _____

2. 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.

3. 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.

SURETY INFORMATION

1. Has the Respondent ever had a bond or surety canceled or forfeited? Yes No

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. (Provide in this format.)

BANKRUPTCY INFORMATION

1. Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes No

If yes, state in an attachment, the date, court, jurisdiction, cause number amount of liabilities and

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amount of assets.

2. Provide a list of officers of the firm who, while in the employ of the firm or the employee of previous firms, were associated with contracts which result in lawsuits, contracts defaulted or filed for bankruptcy. (Please attach if applicable.)

LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure may result in the disqualification of your bid/proposal from consideration or termination of the contract, once awarded.

1. Has your company ever failed to complete, defaulted, or been terminated on a project?
 Yes No

If yes, attach the project name and location, owner and architect names, and explanation of the occurrence.

2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?
 - A) Non-compliance by your company with any obligations under any current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the owner; or Yes No
 - B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or Yes No
 - C) Non-payment to Sub-Contractors and material suppliers? Yes No
 - D) Have you or any member of your Firm or Team paid liquidated damages in the last three (3) years? Yes No

If you answered yes to any of the above questions, provide in an attachment the project name and location, owner and architect names, and explanation of the nature, status and/or outcome of such claim or litigation.

3. Has your company or any of your Sub-Contractors' companies ever failed to take corrective action on items of work under warranty during the warranty period? Yes No
4. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years? Yes No

FINANCIAL

1. Please indicate the current limit of your Bonding Capacity: _____

2. How much work is your firm currently contracted to provide? (Provide current total amount of work in dollars from ALL sources.) _____

3. List bank references, including name and title, address and phone of contact person.

4. Will you provide a detailed financial statement and furnish any other pertinent information that may be required by the City. Yes No
If no, explain: _____

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
 - B. "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;
 - C. "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;
 - D. "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
 - E.
 - F. "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;

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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
 4. any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
 5. 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. SB 13 Contracts with Companies that Boycott Energy Companies
Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

- Yes
- No

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds

3. SB 19 Contracts with Companies that Discriminate Against Firearm Industry
Contractor verifies that 1 it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or 2 the verification required by Section 2274 002 of the Texas Government Code does not apply to the contract.

- Yes
- No

If Contractor is a company with 10 or more full time employees and if this Agreement has a value of at least 100 000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274 it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

4. GOVERNMENT CODE TITLE 10 SUBTITLE F VERIFICATIONS:
- A. Contractor shall verify that it's named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270:
- Yes
 - No
1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.
- B. Pursuant to Sections 2270.001, 2270.002, 808.001, Texas Government Code:
- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
 - 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.
- C. Pursuant to subtitle F, Chapter 2252, Texas Government code, contractor shall not do business with Iran, Sudan or a foreign terrorist organization while providing products or services to the City of New Braunfels.
- Yes
 - No

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

ACKNOWLEDGEMENT

THE STATE
OF TEXAS
COUNTY OF
COMAL

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

SUPPLEMENTAL CONDITIONS

These Supplemental Conditions are in addition to the requirements of the General Conditions of the Contract and are a part of the Contract Documents.

ARTICLE 07.02.01

Section 6 – ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

Reference Section 06.14.07.A.2 of the General Conditions:

Insert paragraph “e”:

- e. Contractor delivers to Owner a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 1, executed by Contractor.

ARTICLE 07.03.01

Section 15 – Item 1.04 – CONSTRUCTION SCHEDULE

Reference Item 1.04 C (8):

8. A Billing Schedule (tabulation of the estimated monthly billings) for the Work shall be prepared and submitted by the Contractor with the submission of the bid and with every monthly pay application. The total for each month and a cumulative total will be indicated. These monthly forecasts are only for planning purposes of the Owner. Monthly payments for actual work completed will be made by the Owner in accordance with Article 11 of the General Conditions.

Reference Item 1.04 D:

- D. The Contractor must receive approval of the Owner for the Construction Schedule and Billing Schedule prior to each monthly Application for Payment. No payment will be made until these are accepted.

ARTICLE 07.07.01

Section 27 – Project Record Documents

Reference Item 2.0 EXECUTION

Insert Paragraph B:

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- B. All project documents will be maintained on the City provided project management software, "Procore". Contractor will be responsible for uploading, maintaining, and viewing all project related documentation within the software.

END OF SECTION

SPECIAL PROVISIONS

These Special Provisions are changes to or addition to the requirements of the Project Manual Section 7-29 and are a part of the Contract Documents.

No Special Provisions Provided”

End of Section

THIS AGREEMENT is dated as of the _____ day of _____ of the year 20__ by and between CITY OF NEW BRAUNFELS (Owner) and _____ (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents as listed below:

- [The Contract Agreement]
- [Standard General Conditions of the Contract]
- [Any other documents used—Special Conditions, Technical Specifications, etc.]
- Payment Bond
- Performance Bond
- Warranty Bond (if requested by the City)
- Plans and Specifications

1.02 The Work is generally described as follows:

[Short description of project scope].

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

[Title of Project as it appears exactly in all other contract documentation]

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

- [Name of Engineer, P.E.]
- Name of Engineering Company
- Address 1,
- Address 2
- Phone Number]

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

A. Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and **readiness for final payment**

as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 60 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the Project Manual General Conditions and completed and ready for final payment in accordance with Section 6 Article 14.7 of the General Conditions within 90 calendar days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner (\$500.00) per calendar day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner (\$500.00) per calendar day for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 Special Damages

A. In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Work, at the prices stated in Contractor's Bid Form, attached hereto as Exhibit B.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Supplemental Conditions (if applicable). Contractor delivers to Owner a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 1, executed by Contractor.

Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95% (percent) of Work completed.
 - b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 To induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract

Documents.

F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - MISCELLANEOUS

8.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

8.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.03 *Successors and Assigns*

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 *Governing Law*

A. The Contract shall be governed by the law of the state of Texas without regard to its conflict of law principles.

8.06 *Venue*

A. This Agreement is entered into and performed in Comal County, Texas, and the Contractor and the Owner agree that mandatory venue for any legal action related to this contract shall be in the District Courts of Comal County, Texas.

8.07 *Prohibition on Contracts with Companies Boycotting Israel*

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. [USE IN LIEU OF THE PREVIOUS SENTENCE IF THE CONTRACTOR IS EXEMPT FROM THE ISRAEL BOYCOTT REQUIREMENT—The Contractor hereby declares that it is exempt from Chapter 2271 of the Texas Government Code, as amended.] The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “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. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

8.08 *Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited*

A. The Contractor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

8.09 *Electronic Signatures (this section is omitted)*

8.10 *Texas Public Information Act*

A. The Contractor recognizes that this Project is publicly owned, and the Owner is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights.

B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of NBU (the Owner).

C. The Contractor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement; (2) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Construction Manager on request of the Owner; and (3) on completion of the Agreement, either:

- i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
- ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.

D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 9 - INSURANCE

9.01 Evidence of Contractor's Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured, the certificates and other evidence of insurance required to be provided by Contractor in accordance with the Insurance Rider that is Exhibit A to this Agreement. Evidence of insurance is attached as Exhibit C to this Agreement.

[Add Exhibit A – Insurance Rider]

[Add Exhibit B – Contractor's Bid Form]

[Add Exhibit C – Evidence of Insurance]

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

Bidding Requirements, Contracts Forms & Conditions of the Contract
CONTRACT AGREEMENT
CSP 22-15 Fiber Optic Cable Construction Project
Exhibit 7

OWNER:

CITY OF NEW BRAUNFELS

By: _____

Printed Name: Robert Camareno

Title: City Manager

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

(If Owner is a corporation, attached evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

CONTRACTOR:

By: _____

Printed
Name: _____

Title: _____

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for giving notices:

License
No.: _____
(Where Applicable)

Agent for service or process:

(If Contractor is a corporation or a partnership,
attach evidence or authority to sign.)

END OF DOCUMENT

Bidding Requirements, Contracts Forms & Conditions of the Contract
CONTRACT AGREEMENT
CSP 22-15 Fiber Optic Cable Construction Project
Exhibit 7