



# SOLICITATION AND OFFER

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

<b>Solicitation Number:</b> CSP 22-017 Old FM 306 and Common Intersection Improvements	<input type="checkbox"/> Invitation for Bid (IFB) <input checked="" type="checkbox"/> Competitive Sealed Proposal (CSP)	<b>Date Issued:</b> May 17, 2022
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## SOLICITATION

Questions may be submitted until close of day **June 3, 2022, 5:00 P.M. (Central Time)**  
 Proposers must submit proposals in a signed original, 1 copy, and one electronic format (USB).  
 Proposals will be received at the New Braunfels City Hall at the address shown above until: **3:00 P.M. (C.D.T.), June 16, 2022**  
 Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:  <small>(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)</small>	<u>Purchasing Representative</u> Barbara Coleman <i>Purchasing Manager</i>	Email : BCoeman@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 23.)

Name and Address of Proposer:	Name and Title of Person Authorized to Sign Offer:  E-Mail Address:  Telephone Number:  Fax Number:
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<b>Signature:</b>	<b>Date:</b>
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Name, Address, E-mail Address, and Telephone Number of Person authorized to conduct negotiations on behalf of Proposer.

(Applies to Request for Proposal only.)

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**PROJECT MANUAL**

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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.

Refer to *City of New Braunfels Utility Standard Specifications* for water and sewer specifications. Refer to *City of San Antonio Standard Specifications for Construction* (as amended and revised) for storm drainpipe and structures specifications. Refer to *TxDOT Standard Specifications 2014* for excavation, subgrade prep, hot mix and concrete pavement, pavement replacement,

**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, TxDOT Standard Details will apply for this project where applicable.

**INSTRUCTIONS FOR RESPONSE****03.01 AVAILABLE DOCUMENTS**

Proposals are due June 16, 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
- online to <http://www.bidnetdirect.com/texas>, click on Bid Opportunities, then City of New Braunfels
- at the City of New Braunfels Website, <http://www.nbtexas.org/2694/Active-Solicitations>

**03.02 PRE-PROPOSAL CONFERENCE**

A Pre-Proposal Conference will be hosted virtually at **2:00 p.m. (CST) on June 1, 2022 (CST)**. Remote access via Zoom instructions are:

Register in advance for this webinar:

- [https://us02web.zoom.us/webinar/register/WN\\_DdKc4WNLQnaFISCyCuZijw](https://us02web.zoom.us/webinar/register/WN_DdKc4WNLQnaFISCyCuZijw)
- Please click the link below to register in advance and join the webinar:
- After registering, you will receive a confirmation email containing information about joining the webinar.

Attendance is not mandatory but due to the complexity of the project, it is strongly recommended. Proposers are encouraged to attend and participate in the conference. The City will transmit to all prospective Proposers of record such Addenda as the City considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Pre-Proposal conference minutes and any addendum may be downloaded at The BidNet Direct website <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and the City of New Braunfels' website, <http://www.nbtexas.org/2694/Active-Solicitations>

**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 copy, and one (1) electronic copy on USB. 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 – Qualifications of Proposer** (Exhibit 3)
7. **TAB 6 – Plan and Schedule** as required in Exhibit 3, Qualifications of Proposer, Section 5.
8. **TAB 7 – Acceptable Documentation**
  - Proposal Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal (Section 4, Article 11).
  - One copy of Certificate of Insurance completed and signed (Section 4, Article 15).
  - Conflict of Interest (Section 4, Article 16.11).
  - Certificate of Interested Parties; Form 1295 (Section 4, Article 16.10).
9. **TAB 8 – Required information indicated in Drawings**, if applicable.
10. **Required after contract award – Performance and Payment Bonds** (Section 4, Articles 12 and 13).

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

**CSP 22-017**  
**Old FM 306 and Common Intersection**  
**Improvements**  
**Response Due: June 16, 2022 at 3:00 P.M.**

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.**

Proposals will be publicly opened and read aloud directly after bids are due. 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.

PROJECT MANAGER:	Charlie Blue	830-221-4644
CONTRACT PROCUREMENT REPRESENTATIVE:	Barbara Coleman	830-221-4389

**END OF SECTION**

**GENERAL INFORMATION****ARTICLE 1 – THE PROJECT**

**04.01.01** Old FM 306 and Common Intersection is a project located within the City of New Braunfels.

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

Construction of Intersection Improvements including traffic signals, pedestrian signals, curb and curb ramps, pavement markings.

**ARTICLE 2 – WORK**

**04.02.01** Contractor shall complete all Work as specified or indicated in the Plans, Specifications and Contract Documents. The Work is generally described as follows:

The City of New Braunfels seeks a bid for the facilities included in the Old FM 306 and Common Intersection Improvements plans, prepared for the City of New Braunfels.

All proposals shall follow the format provided by the City of New Braunfels.

The City is seeking a construction company with quality experience in parking lot and trail construction.

**Statement of Work:**

- Installation of Traffic Signals
- Installation of sidewalks and ADA pedestrian ramps
- Installation of Pedestrian controls and signage
- Intersection pavement markings
- Contractor shall coordinate all work, inspections, and approvals with the City of New Braunfels.
- Project shall comply with the United States Occupational Safety & Health Administration regulations.
- Methods & Means of construction shall be compliant with all applicable Federal, State, and Local regulations. This includes obtaining all necessary permits and inspections.
- Contractor to adhere to City of New Braunfels construction administration procedures.
- Maintain and submit all project records such as record drawings, project manuals, and warranties for approval by the City of New Braunfels.

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

This project shall require expertise in the following construction areas:

- Traffic Signal Installation
- Pedestrian Ramps and controls
- Curb and Gutter
- Street pavement repair

**ARTICLE 3 – DESIGN ENGINEER**

**04.03.01** Jacobs Engineering 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 **30** 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 **45** 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**

- 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** for each calendar 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** for each calendar 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.

**ARTICLE 5 – CONTRACT PRICE**

**04.05.01** 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 04.05.01.A below:

- A. For all Work, at the unit prices stated in Contractor's Proposal.

**ARTICLE 6 – PAYMENT PROCEDURES****04.06.01 Submittal and Processing of Payments**

Contractor shall submit Applications for Payment in accordance with the General Conditions and Exhibit 4, "Supplemental 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.
  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 (5% retained).
    - b. 95% (percent) of cost of materials and equipment not incorporated in the Work (5% retained).

**04.06.03 Final Payment**

- A. Upon final completion and acceptance of the Work in accordance with Section 6.14.07 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**

**04.07.01** 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.

## **ARTICLE 8 – CONTRACT DOCUMENTS**

### **04.08.01 Contents**

- A. Contract Documents consist of the following:
  - 1. Competitive Proposal
    - a. Solicitation and Offer Form
    - b. Performance Bond
    - c. Payment Bond
    - d. General Information
    - e. Terms and Conditions
    - f. Specifications as listed in the table of contents of the Project Manual
    - g. Addenda (if any)
    - h. Exhibits and Attachments (Cost Proposal Form, Prevailing Wage Schedule, Qualifications of Proposer, Supplemental Conditions, Special Provisions, Plans, and Technical Specifications)
  - 2. Project Manual (Sections 6 - 29)
  - 3. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Contract Award Form
    - b. Notice to Proceed
    - c. Work Change Directives
    - d. Change Orders
- B. The documents listed in Paragraph 04.08.01.A are attached to this contract except as expressly noted otherwise above.
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Section 6, Article 3, Paragraph 3.04 or the Project Manual.

**ARTICLE 9 – COMPETITIVE PROPOSALS****04.09.01 Competitive Proposals**

This proposal is 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. **Proposed Project Schedule:**

DATE	MILESTONE
May 17, 2022	CSP issued on <a href="http://www.bidnetdirect.com/texas">http://www.bidnetdirect.com/texas</a> and <a href="http://www.nbtexas.org/">www.nbtexas.org/</a>
June 1, 2022	Preproposal Meeting - at 2:00 pm via zoom
June 3, 2022	Deadline for questions and requests for clarification
June 16, 2022	Competitive Sealed Proposal (CSP) submission deadline – Time and address are provided on Page 1 and in Section
July 2022	Anticipated approval, and award of Contract, by City Council

- D. **Evaluation Criteria:** The proposals submitted in response to this 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:

**1. Cost Proposal Form: (60 Points)**

- a) The Owner will consider the total contract cost as part of its evaluation. The Owner will have the right to accept alternates, if applicable, in any order or

combination unless otherwise specifically provided in the Proposal Documents. The Owner will have the right to accept alternative cost proposal relating to alternate project schedules per Item 3 below.

## 2. Relevant Experience and Other Considerations: (20 Points)

### Refer to Exhibit 3, "Qualifications of Proposer"

- a) Experience as a general contractor with specific experience in general road construction, underground utilities and reconstruction/rehab of existing roads of the same or similar type, size, nature and class as the project being proposed.
  - Minimum experience is indicated in Exhibit 3. Consideration will be given to the number of years of the Proponent has been in business.
- b) If you are using a sub for this work provide the sub-contractors specific experience in general road construction, underground utilities, and as well as construction of bio-retention and water quality basins of the same or similar type, size, nature and class as the project being proposed.
- c) Consideration will be given to projects which are:
  - occupied or substantially **complete**, as a prime Contractor or sub-Contractor within the last five years;
  - at a cost in excess of \$10,000,000 that your company is **presently** constructing as a prime Contractor or Sub-Contractor;
  - the prime Contractor or Sub-Contractor on projects with CONB as the Owner.
- d) Other Considerations – such as historical information and facts as per Section 4.9.1.E. "Other Considerations" and qualifications from Exhibit 3.

## 3. Plan and Schedule: (20 Points)

Represent a potential plan and schedule for performing the work for the project.

- a) **Baseline Schedule**: Provide a proposed baseline schedule in Microsoft Projects for this Work defining critical path.
- b) **Schedule Strategies**: Provide strategies which are included in the proposal to minimize delays and areas for possible time savings.

## 4. 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.

### TOTAL POINTS POSSIBLE: **100**

- E. **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.

- F. **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, including submitter's past working or business relationship with the City, if any. 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.

#### **ARTICLE 10 – GENERAL CONTRACTOR REGISTRATION**

**04.10.01** 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](http://www.nbtexas.org). In addition to topics such as permitting and fees, etcetera, 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.

#### **ARTICLE 11 – PROPOSAL GUARRANTY**

**04.11.01** 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.

#### **ARTICLE 12 – CONTRACT SECURITY**

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

#### **ARTICLE 13 – PERFORMANCE AND PAYMENT BONDS**

**04.13.01** When performance and/or payment bonds are required, each shall be issued in equal to the Contract Amount as security for the faithful performance and/or payment of all Contractors' obligations under the Contract Documents, as specified in Terms and Conditions, Section 5, Article 6.

#### **ARTICLE 14 – MINIMUM WAGES AND PREVAILING WAGE RATES**

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

Refer to Exhibit 2, "Prevailing Wage Schedule"

#### **ARTICLE 15 – INSURANCE AND LIABILITY COVERAGE**

**04.15.01** 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.
- E. 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
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  - d. Worker's Compensation: - Statutory  
Or Employer's Liability Insurance:

Each Accident	-	\$1,000,000.00
Disease each employee	-	\$1,000,000.00
Policy Limit	-	\$1,000,000.00

## ARTICLE 16 – MISCELLANEOUS

### 04.16.01 Terms

Terms used in this Agreement will have the meanings stated in the Section 6 (General Conditions) Section 9 (Definitions and Terminology).

### 04.16.02 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.

### 04.16.03 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.

**04.16.04 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.

**04.16.05 Contractor's Certifications**

Contractor certifies in Exhibit 3, 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.

**04.16.06 Certification of House Bill 89**

Contractor certifies in Exhibit 3, 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.

**04.16.07 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.

#### **04.16.08 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.

#### **04.16.09 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.

#### **04.16.10 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](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.

#### **04.16.11 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](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> and the City website, <http://www.nbtexas.org>, 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 GUARRANTY**

**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 – CONTRACT TIME**

**05.07.01** 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 8 – LIQUIDATED DAMAGES**

**05.08.01** Provisions for liquidated damages, if any, are set forth in Section 4.04 - General Information.

**ARTICLE 9 – SUBSTITUTE AND “OR-EQUAL” ITEMS**

**05.09.01** 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 15 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 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 10 – SUBCONTRACTORS, SUPPLIERS AND OTHERS**

**05.10.01** If the Supplementary Conditions 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.

**05.10.02** If apparent Successful Proposer declines to make any such substitution, Owner may award the Contract to the next lowest 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 11 – PREPARATION OF PROPOSAL**

**05.11.01** 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 12 – SUBMISSION OF PROPOSAL**

**05.12.01** 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 13 – BASIS OF PROPOSAL; COMPARISON OF COSTS**

**05.13.01 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.

**05.13.02 Lump Sum Price**

1. Proposers for 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 14 – MODIFICATION AND WITHDRAWL OF PROPOSALS**

**05.14.01** 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.

**05.14.02 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.

**05.14.03** 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 15 – OPENING OF PROPOSALS**

**05.15.01** 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 16 – PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE**

**05.16.01** 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 17 – AWARD OF CONTRACT**

**05.17.01** 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.

**05.17.02** 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.

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

**05.17.04** 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.

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

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

**05.17.07** Other causes for the Owner to disqualify a bidder or reject its bid include:

- a) The bid has any omission, alteration of form, addition or condition not called for, or unreasonable or unbalanced unit bid prices.
- b) The bid is incomplete or is not accompanied by an acceptable bid guaranty.
- c) More than one bid is submitted by the bidder.
- d) There is evidence of collusion among bidders.
- e) There is evidence of unsatisfactory performance, default or litigation with an owner by the bidder under a previous contract, either with this Owner or with another owner, including work by the bidder as a subcontractor.
- f) There is evidence that the bidder 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 Bidder is not responsible because there is evidence that the bidder 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 bidder 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 Bidder's qualifications or the advertised contract award date.
- i) More than 50 percent of the work performed by subcontractors to the Contractor.
- j) The Bidder does not meet the minimum experience qualifications established in the Statement of Bidder's Qualifications.

**05.17.09** Each bidder by submission of a bid 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 bid administration, bid evaluation, recommendation for Contract award, the award of the Contract and the rejection of any bids.

## **ARTICLE 18 – CONTRACT SECURITY**

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

**ARTICLE 19 – SALES TAX**

**05.19.01** 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.

**05.19.02** 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 20 – LAWS AND REGULATIONS**

**05.20.01** 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 21 – RESIDENT PROPOSERS**

**05.21.01** 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.

**05.21.02** 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 22 – GENERAL CONTRACTOR REGISTRATION**

**05.22.01** 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](http://www.nbtexas.org). In addition to topics such as permitting and fees, etcetera, 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.

**ARTICLE 23 – PREVAILING WAGES**

**05.23.01** Proposer's must comply with all requirements of the prevailing wage Statue 2258 and Davis-Bacon and Related Acts for non-Federal contracts.



**05.23.02** 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 2; "Prevailing Wage Schedule"

**05.23.03** 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 24 – EMPLOYMENT REQUIREMENTS AND WAGE RATES**

**05.24.01** 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.

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

**05.24.03** 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.

**05.24.04** 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.

**05.24.05** 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.

**05.24.06** 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.

**05.24.07** 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 25 – RELEASE OF INFORMATION**

**05.25.01** 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 26 – DISCLOSURE OF PROPRIETARY INFORMATION**

**05.26.01** 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.

**END OF SECTION**

E Common Street at Old FM 306 Intersection Improvement Project COST PROPOSAL FORM							
No.	TXDOT ITEM CODE		DESCRIPTION	UNITS	QTY	UNIT PRICE	TOTAL COST
1	162	6002	BLOCK SODDING	SY	155		
2	416	6003	DRILL SHAFT (30 IN)	LF	11		
3	416	6004	DRILL SHAFT (36 IN)	LF	46		
4	460	6002	CMP (GAL STL 18 IN)	LF	20		
5	460	6003	CMP (GAL STL 24 IN)	LF	20		
6	467	6348	SET (TY II) (18 IN) (CMP) (6:1) (P)	EA	2		
7	467	6380	SET (TY II) (24 IN) (CMP) (6:1) (P)	EA	2		
8	531	6001	CONC SIDEWALKS (4")	SY	198		
9	531	6004	CURB RAMPS (TY 1)	EA	8		
10	618	6023	CONDT (PVC) (SCH 40) (2")	LF	445		
11	618	6029	CONDT (PVC) (SCH 40) (3")	LF	175		
12	618	6030	CONDT (PVC) (SCH 40) (3") BORE	Lif	990		
13	620	6009	ELEC CONDR (NO.6) BARE	LF	1295		
14	621	6002	TRAY CABLE (3 CONDR) (12 AWG)	LF	355		
15	624	6002	GROUND BOX TY A (122311) W/APRON	EA	5		
16	628	6165	ELC SRV TY D 120/240 070(NS)AL(E)SP(O)	EA	1		
17	644	6004	IN SM RD SN SUP&AM TY10BWG (1)SA(T)	EA	4		
18	644	6076	REMOVE SM RD SN SUP&AM	EA	3		
19	666	6047	REFL PAV MRK TY I (W)24"(SLD)(090 MIL)	LF	255		
20	666	6140	REFL PAV MRK TY I (YELLOW) 12" (SLD)	LF	3308		
21	666	6259	RE PM W/RET REQ TY I (W)8"(SLD) '(090 MIL)	LF	200		
22	666	6267	REFL PAV MRK TY I (W) ARROW (090MIL)	EA	8		
23	666	6273	REFL PAV MRK TY I (W) WORD (090MIL)	EA	2		
24	666	6302	RE PM W/RET REQ TY I (W)4"(SLD)(090 MIL)	LF	2858		
25	666	6311	RE PM W/ RET REQ TY 1 (Y) 4" (BRK) (090 MIL)	LF	1447		
26	666	6314	RE PM W/RET REQ TY I (Y)4"(SLD)(090 MIL)	LF	4134		
27	672	6007	REFL PAV MRKR TYPE II-C-R	EA	10		
28	672	6009	REFL PAV MRKR TY II-A-A	EA	140		
29	677	6001	ELIM EXT PAV MRK & MRKS (4")	LF	8439		
30	677	6007	ELIM EXT PAV MRK & MRKS (24")	LF	250		

**E Common Street at Old FM 306 Intersection Improvement Project  
COST PROPOSAL FORM**

No.	TXDOT ITEM CODE		DESCRIPTION	UNITS	QTY	UNIT PRICE	TOTAL COST
31	678	6001	PAV SURF PREP FOR MRK (4")	LF	8439		
32	678	6004	PAV SURF PREP FOR MRK (8")	LF	200		
33	678	6008	PAV SURF PREP FOR MRK (24")	LF	250		
34	678	6009	PAV SURF PREP FOR MRK (ARROW)	EA	8		
35	678	6016	PAV SURF PREP FOR MRK (WORD)	EA	2		
36	680	6002	INSTALL HWY TRF SIG (ISOLATED)	EA	1		
37	682	6001	VEH SIG SEC (12") LED (GRN)	EA	8		
38	682	6002	VEH SIG SEC (12") LED (GRN ARW)	EA	2		
39	682	6003	VEH SIG SEC (12") LED (YEL)	EA	8		
40	682	6004	VEH SIG SEC (12") LED (YEL ARW)	EA	2		
41	682	6005	VEH SIG SEC (12") LED (RED)	EA	8		
42	682	6006	VEH SIG SEC (12")LED(RED ARW)	EA	2		
43	682	6018	PED SIG SEC (LED) (COUNTDOWN)	EA	8		
44	682	6049	BACKPLATE W/REFL BRDR (4 SEC)	EA	2		
45	682	6060	BACKPLATE W/REFL BRDR (3 SEC)	EA	8		
46	684	6009	TRF SIG CBL (TY A)(12 AWG) '(4 CONDR)	LF	1070		
47	684	6028	TRF SIG CBL (TY A)(14 AWG) '(2 CONDR)	LF	995		
48	684	6033	TRF SIG CBL (TY A)(14 AWG) '(7 CONDR)	LF	820		
49	686	6033	INS TRF SIG PL AM (S) 1 ARM (32')	EA	1		
50	686	6035	INS TRF SIG PL AM (S) 1 ARM (32') LUM	EA	1		
51	686	6043	INS TRF SIG PL AM (S) 1 ARM (40') LUM	EA	1		
52	686	6049	INS TRF SIG PL AM (S) 1 ARM (48')	EA	1		
53	687	6001	PED POLE ASSEMBLY	EA	4		
54	688	6001	PED DETECT PUSH BUTTON (APS)	EA	8		
55	688	6003	PED DETECTOR CONTROLLER UNIT	EA	1		
56	6001	6001	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	30		
57	6027	6008	GROUND BOX (PREPARE)	EA	5		
58	6292	6001	RVDS (PRESENCE DETECTION ONLY)	EA	4		
59	6292	*	RADAR PRESENCE DETECTOR COMM CABLE	LF	545		
<b>PROPOSAL TOTAL</b>							<b>0</b>

**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://beta.sam.gov/>

**PREVAILING WAGES**

Proposers must comply with all requirements of the prevailing wage Statute 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://beta.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.

"General Decision Number: TX20220007 02/25/2022

Superseded General Decision Number: TX20210007

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: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered  into on or after January 30,  2022, or the contract is  renewed or extended (e.g., an  option is exercised) on or  after January 30, 2022:           	. Executive Order 14026  generally applies to the  contract.  . The contractor must pay  all covered workers at  least \$15.00 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 2022.
If the contract was awarded on  or between January 1, 2015 and	. Executive Order 13658  generally applies to the

January 29, 2022, and the	contract.
contract is not renewed or	. The contractor must pay all
extended on or after January	covered workers at least
30, 2022:	\$11.25 per hour (or the
	applicable wage rate listed
	on this wage determination,
	if it is higher) for all
	hours spent performing on
	that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* SUTX2011-006 08/03/2011

	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		
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 SIGNALIZATION:		
Traffic Signal Installation		
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	

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

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

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. 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 <https://www.dol.gov/agencies/whd/government-contracts>.

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)).

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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.

#### 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.

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
- \* 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 National Office because National Office has 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 DECISIO"

**QUALIFICATIONS OF PROPOSER**

To demonstrate qualifications to perform the Work, each Proposer must submit written evidence of financial data, previous experience, present commitments and other such data as may be called for below. Each proposal must contain evidence of Proposer’s qualification to do business in the State of Texas or covenant to obtain such qualification prior to award of the contract.

Each proposal must contain evidence of Proposer’s qualifications to perform the work described in the Contract Documents. Provide a list of similar projects as may be called for below.

The object of the request for the qualification of Proposer is neither to discourage proposals nor to make it difficult for qualified Proposer to file proposals. Nor is it intended to discourage beginning Contractors. It is intended to make it possible for Owner to obtain more exact information on financial ability, equipment, and experience in order to reduce hazards involved in awarding contracts to parties who may not be qualified to perform the Work as specified.

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

**Answer all questions. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets.**

Company name: \_\_\_\_\_

Permanent main office address: \_\_\_\_\_  
Street City, ST ZIP

Tax ID No.: \_\_\_\_\_

DUNS 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) \_\_\_\_\_

4. When organized: \_\_\_\_\_

5. If a corporation, where incorporated: \_\_\_\_\_

6. How many years has your company been engaged in business under its present name? \_\_\_\_\_



**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

**EXPERIENCE & QUALIFICATIONS:**

Prospective Respondents must show and document that they are responsible, qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed, and prospective respondents must have the capability and capacity in all respects to fully satisfy all of the contractual requirements described in this solicitation. Prospective bidders must not have been terminated by the City of New Braunfels on any prior projects nor have any litigation with the City for any construction project.

1. How many years has your current organization been doing business as a construction general contractor? \_\_\_\_\_ years

If less than five (5) years, please explain in an attachment your organization's construction general contractor history.

2. Your company certifies that the Superintendent/Manager you propose for this Project has sufficient knowledge, skills and experience in similar Project work:  Yes  No



3. Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the General and Supplemental Conditions of this Contract.  Yes  No
4. Your company certifies that it is not in arrears in the payment of any obligations to the City of New Braunfels, including, without limitation, property or sales taxes, fees or utility charges.  Yes  No  
If no to any of the above, attach an explanation.
5. Bids shall be considered from responsible respondents with 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 Respondent's experience, in combination with its subcontractor's experience, should include a *minimum* of three (3) projects within the last five (5) years.
  - 5.1 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, phone number, architects, contract amount, percent complete, scheduled completion date, and type of work performed by your work forces. Include names and phone numbers of contact persons for each project.
    - 5.1.1 State total worth of work in progress and under contract: \_\_\_\_\_
  - 5.2 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion, the type of work performed by your work forces, and percentage of the cost of the work performed with your own forces. Include names and phone numbers of contact persons for each project.
    - 5.2.1 State average annual amount of construction work performed during the past five years:  
\_\_\_\_\_
  - 5.3 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.
  - 5.4 Proposer shall provide the name of each subcontractor and/or supplier the Proposer will use in the performance of the contract. The proposer shall specify the work to be performed, the amount of the subcontract and the percentage of the contract the proposer will expend throughout the life of the project.

*(Please note that any changes in the subcontractor and/or supplier listed below shall require additional approval prior to contract execution.)*

6. Provide a list of primary sub-Contractors and Suppliers for the Work.

### PROJECT SCHEDULE

Provide an estimated project schedule based on the construction specifications. Include this information as a Gantt Chart in Tab 6.

### 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: \_\_\_\_\_

\_\_\_\_\_

### CONTRACTOR'S CERTIFICATIONS

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract, as defined in Paragraph 04.09.05:  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 bidding process or in the Contract execution;
  - C. "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;
  - D. "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
  - E. "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.

### 2. NON-COLLUSION CERTIFICATION

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

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

acting on its behalf.

### 3. HOUSE BILL 89 VERIFICATION

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

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

B. Pursuant to Section 2270.001, Texas Government Code:

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

### 4. SAFETY RECORD QUESTIONNAIRE & STATEMENT OF BIDDER'S SAFETY EXPERIENCE

Pursuant to Section 252.0435 of the Local Government Code, the City of New Braunfels will consider the safety records of potential contractors prior to awarding bids on City contracts. The City of New Braunfels follows written definitions and criteria for accurately determining the safety record of a Bidder prior to awarding bids on City contracts. The term "Bidder" includes the firm, corporation, partnership, or other legal entity represented by the Bidder or anyone acting for such firm, corporation, partnership or other entity submitting the bid. The definitions and criteria for determining the safety record of a Bidder are:

"Citations" include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received from the TCEQ shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History, 30 Texas Administrative Code, Chapter 60.2 (c) (1) and (2).

"Environmental Protection Agency" includes, but is not limited to the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

1. If the Bidder's response to the following questions reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Bidder for serious violations of Occupational Safety & Health Administration (OSHA) regulations within the past five (5) years, the City will, at its discretion, determine whether to

disqualify the Bidder.

2. If the Bidder's response to the following questions reveals more than one (1) case in which Bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
3. If the Bidder's response to the following questions reveals that the Bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death, at its discretion, the City will determine whether to disqualify the Bidder.
4. The City may consider the responses to each question listed below separately when making a discretionary determination of whether to disqualify a Bidder and it may consider the cumulative impact of the information generated by the Bidder's responses in making the determination.
5. In order to consider the safety records of potential contractors prior to awarding bids on City contracts, the City requires that Bidders answer the following questions and submit them upon request:

QUESTION ONE

Has the Bidder or sub contractors' companies received any Citations for violations of OSHA within the past five (5) years?  Yes  No

QUESTION TWO

Has the Bidder or sub contractors' companies received any Citations for violations of environmental protection laws or regulations within the past five (5) years?  Yes  No

QUESTION THREE

Has the Bidder or sub contractors' companies ever been convicted, within the past ten (10) years, of a criminal offense or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily injury or death?  Yes  No

If the Bidder or sub contractors' companies has indicated "Yes" to any question above, the Bidder must provide to the City, with its bid submission, the following information:

Date of Citation or offense and location where violation or offense occurred, type of violation or offense, final disposition of violation or offense, if any, and penalty assessed.

In addition, the City will utilize the following information and, in its discretion, as additional support to make any discretionary determination of whether to disqualify a Bidder. Accordingly, Bidder must answer the following questions and provide evidence that it meets minimum OSHA construction safety standards and has a lost time injury rate that does not exceed the limits established below:

1. Does the Bidder have a written construction safety program?  Yes  No
2. Does the Bidder conduct regular construction site safety inspections?  Yes  No
3. Does the Bidder have an active construction safety training program?  Yes  No

4. Does the company have a lost time injury rate and a total recordable injury rate of less than or equal to the national average for North American Industrial Classification System (NAICS) Category 23 for each of the past five (5) years?  Yes  No  
(Attach the Bidder's OSHA 300 and 300A logs for the past five (5) years.)

5. Does the Bidder have an experience modifier rate of 1.0 or less?  Yes  No  
(Attach the Bidder's NCCI workers compensation experience rating sheets for the past five (5) years.)

6. Has the Bidder had any OSHA inspections within the past six (6) Months?  Yes  No

If yes, provide sufficient documentation to indicate the nature of the inspection, the findings, and magnitude of the issues.

---

**ACKNOWLEDGEMENT**

THE STATE  
OF TEXAS  
COUNTY OF  
COMAL

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 bid to be rejected.

*Bidder's full name and entity status:*

\_\_\_\_\_  
**Company's Name**

\_\_\_\_\_  
**Signature, Authorized Representative of Bidder**

\_\_\_\_\_  
**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 07.01.01

Section 6 – ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

#### **Reference Section 06.04.02.A. of the General Conditions:**

In the preparation of Drawings and Specifications, Engineer or Engineer's Consultants have relied upon:

06.04.02.A.2. The following drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

- a. Survey data as provided in the contract drawings and data files

Copies of this report that are not included with the Bid Documents may be examined or obtained from the City Engineer. These reports are not part of the Contract Documents, but the technical data contained therein upon which Contractor is entitled to rely as provided in Paragraph 4.02.A.2. of the General Conditions are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Design Engineer and Design Engineer's Consultants in the preparation of Drawings and Specifications.

### ARTICLE 07.01.02

Section 6 – ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

#### **Reference Section 06.04.05.A of the General Conditions:**

Delete this section "Reference Points" in its entirety.

### 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:

- 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