



SOLICITATION AND OFFER

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

Solicitation Number: RFQ 22-035
Barbarosa Road Improvements

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

Date Issued:
August 11, 2022

SOLICITATION

Questions may be submitted until close of day August 18, 2022, 5:00 P.M. (Central Time)

Respondents must submit sealed SOQ containing one (1) signed original hardcopy and one (1) in electronic format (USB).
Electronic submissions do not require original hardcopy and USB to be submitted.

Qualifications will be received at the office of the City Secretary at the address shown above until: 3:00 P.M. (CST), September 1, 2022
There will not be a public opening. Qualifications received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:

Barbara Coleman,
Purchasing Manager

Email: BColeman@nbtexas.org
Phone: (830) 221-4389
Fax: (830) 608-2112

(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

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

OFFER

(This portion must be fully completed by Proposer.)

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

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

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

Name and Address of Respondent:

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

Signature:

Date:

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

(Applies to Request for Qualifications only)

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SECTION 3 – PROJECT DESCRIPTION AND SCOPE

3.1. BACKGROUND:

The City of New Braunfels is seeking Statements of Qualifications (SOQ) from qualified design firms interested in providing engineering services required for the preparation of plans, specifications, and estimates (PS&E) and related documents for the improvement of Barbarosa Road from FM 1101 to FM 758.

3.2. SCOPE OF SERVICES:

1. **TASK ONE** – TxDOT 30% DESIGN: The selected firm will develop the design concepts for the project and produce a 30% Design Submittal.
2. **TASK TWO** – TxDOT 60% DESIGN: The selected firm will develop 60% PS&E Documents to describe scope and finalize layout.
3. **TASK THREE** – TxDOT 90% DESIGN: The selected firm will provide 90% PS&E documents.
4. **TASK FOUR** – 100% DESIGN/CONSTRUCTION DOCUMENTS: The selected firm will finalize PS&E Documents.
5. **TASK FIVE** – BIDDING AND CONSTRUCTION PHASE ADMINISTRATION: The selected firm will assist the city in responding to questions and reviewing bids, reviewing shop-drawings and submittals, responding to RFIs, and construction administration tasks.
6. Must be familiar with TxDOT Local Government Project Procedures (LGPP)
7. Scope to include initial design concept meeting and milestone meetings (30/60/90) with the City of New Braunfels and TxDOT; TxDOT District Design Concept (DDC) and District Design Review Team (DDRT) meeting criteria and all checklists shall be met.

3.3. DELIVERABLES:

Task One (30%):

- Permitting/Code Review (including TxDOT, TCEQ, and THC requirements)
- Preliminary Cost Estimate
- Preliminary Schematic of layout
- Preparing materials for (1) public meeting

Task Two (60%)

- Detailed layout of roadway improvements
- Construction Details
- Draft Specifications

Task Three (90%):

- Finalizing Construction Details
- TxDOT Specifications
- Final Cost Estimate
- Permit Drawings to meet Sec. 144-5.3 of the New Braunfels Development Code
- Finalize PS&E Documents

Task Four (100%) Design/Construction Documents)

- Finalize 100% PS&E Documents to be permitted for construction.

Task Five (Bidding and Construction Phase)

- Clarification via addenda
- Responding to questions during bidding phase
- Assist in bid tabulation review
- Review submittals and shop drawings
- Respond to RFIs
- Construction Site visits as needed
- Attend construction progress meetings
- Provide Field Reports as needed
- Project Closeout – punch-list for substantial completion
- Assist in project closeout documents as needed.

3.4. OTHER CONDITIONS AND INFORMATION:

Formats for Deliverables: All deliverables for all Stages and Phases shall be submitted in outlined software formats (“.pdf” AND “.dwg” AutoCAD® for Drawing files; “.pdf” AND Microsoft Word® “.doc” for Specification files and Meeting Minutes; “.pdf” AND Microsoft Project® for Project Schedules) via electronic download at the end of each Stage and Phase as Record Deliverables. Files may be compressed in a “.zip” file format.

Meeting Minutes: The Consultant shall record and issue meeting minutes for all meetings, conferences, and conference calls attended by the Consultant to all attendees.

Project Schedule: The Consultant shall submit within ten (10) calendar days after the award and/or execution of the Contract a Project Schedule, which shall include:

- Proposed duration of each Stage and Phase.
- Milestone dates including review submittals.
- Allowance for reasonable time required for all reviews/approvals by all authorities.
- Environmental Engineering/Surveying
- ROW acquisition

Standard of Care: The standard of care of the services provided by the Consultant shall meet or exceed that level commonly expected of professional architects and engineers that are licensed to practice in the State of Texas.

The Consultant shall assume the role of “Engineer-of-Record” for all work performed under the contract and be licensed in the State of Texas. All documents for the work performed under the contract shall bear a current, active professional seal recognized by and as required the State of Texas.

The Consultant shall attend and participate in project meetings with various City departments/divisions and/or public meetings as required during all Stages.

Upon request, the Consultant shall make field observations and conduct investigations, as required, to evaluate existing conditions during all Stages.

3.5. PERFORMANCE MEASURES / KEY PERFORMANCE INDICATORS:

Upon contract award, the selected firm and the City shall mutually determine performance measures for the contract to include, but not be limited to, factors such as:

- adherence to schedule;

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- effective communication with City staff;
 - overall quality of design deliverables

3.6. DAYS TO ACHIEVE COMPLETION AND FINAL PAYMENT:

- A. The Work will be completed **by March 2023 for 30% January 2024 for 100%**. The completion schedule will be further defined with the final contract.
- B. The Firm 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 the final contract.
- C. Extensions will require approval by the City.
- D. The Firm shall pay Owner **\$250** for each calendar day that expires after the time specified in the final contract for Completion until the Work is complete. After Completion, if Firm shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Firm shall pay Owner **\$250** for each calendar day that expires after the time specified in the contract until the Work is completed and ready for final payment.

SECTION 4 – REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS
4.1. PROPOSED SOLICITATION SCHEDULE:

DATE	STEP 1 - MILESTONES
August 11, 2022	RFQ issued on http://www.nbtexas.org/2694/Active-Solicitations or BidNet Direct website: https://www.bidnetdirect.com/texas/city-of-new-braunfels
August 17, 2022	Deadline for questions and request for clarification
September 1, 2022	Statement of Qualifications (“SOQ”) submission deadline
September 1-14	City evaluation of SOQs submitted by firms
September 2022	Possible Interviews of Shortlisted Firms
September 2022	Final negotiations with top-ranked firm
October 2022	Anticipated timeframe for City Council to consider award of contract

4.2. PRE-SUBMITTAL MEETING:

A Pre-submittal meeting will not be held for this project

4.3. CONTACT FOR QUESTIONS:

Questions relating to definitions, interpretations, and/or requests for clarification must be in writing, on or before **August 17, 2022 at 5:00 P.M. (Central Time)**, directed to:

Purchasing Representative: Barbara Coleman, Purchasing Manager, via email bcoleman@nbtexas.org

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

Questions – RFQ 22-035 Barbarosa Road Improvements”

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

4.4. RESPONSES TO INQUIRIES:

Responses to inquiries that directly affect an interpretation or change to this RFQ will be issued in writing by Purchasing as an addendum and posted at: the City website <http://www.nbtexas.org/2694/Active-Solicitations> and the BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

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

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

Respondents shall be responsible for monitoring the City web site at <http://www.nbtexas.org/2694/Active-Solicitations> or BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancelations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

4.5. SUBMISSION INSTRUCTIONS:

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

4.5.2 To achieve a uniform review process and to obtain the greatest degree of comparability, the City of New Braunfels requires that SOQ be submitted manually or electronically.

4.5.3 Electronic Submittal – For this Request for Qualifications, electronic submission is an option to respondents. The City of New Braunfels has partnered with its third-party vendor, Texas Purchasing Group (BidNet Direct) as its e-procurement site. The link to BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

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

4.5.4 Manual submittal is another option for delivery and shall be submitted as follows:

- Deliver to the New Braunfels City Hall in person, or by Express Mail or delivery service to:

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

- The outside of the Proposal envelope or package **must state**:
**"RFP 22-035 Barbarosa Road Improvements
Due Date: September 1, 2022, 3:00 P.M. CT"**
- **SEALED ENVELOPES OR PACKAGES** identified on outside with respondent's name and address. Failure to submit response in this manner may subject Proposer to disqualification.
- Include **one original, signed hardcopy**, and **one electronic copy provided on USB**.

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

4.5.6 Proposals may not be withdrawn after the time set for the closing, unless approved by the City.

4.5.7 An authorized official of the firm must print or type their name and **SIGN THE SOQ**.

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- 4.5.8** Responses must be bound and submitted in a sealed envelope or package.
- 4.5.9** THE FOLLOWING ITEMS MUST BE INCLUDED IN YOUR STATEMENT OF QUALIFICATIONS IN THE FOLLOWING ORDER.
1. Cover/Title Page: showing the Request for Qualifications subject; the firm's name; the name, address, email and telephone number of the contact person; and the date of the response.
 2. **TAB 1: Solicitation and Offer Form and addenda**:
 - Include a signed copy of all addenda to the original RFQ. Failure to include a signed copy of all addenda issued will result in the removal of the SOQ from consideration, if any.
 3. **TAB 2: Statement of Interest; *please limit response to 1 page***.
 - Concisely state your understanding of the services required and availability of the firm, its principals (s) and assigned professionals to undertake the project, reporting responsibilities and how the firm will interface with the City of New Braunfels project manager.
 4. **TAB 3: Qualifications, Understanding of the project and project approach (40 points) *please limit response to 2 pages***.
 - Provide a narrative describing the firm's specific expertise and unique qualifications as they pertain to this particular project.
 - Describe firms approach and availability and commitment of the firm, its principal(s) and assigned professionals to undertake the project, reporting responsibilities and how the firm will interface with the City's project manager. Bi-monthly project meetings will be required unless more frequent meetings are necessary.
 5. **TAB 4: Experience in providing similar services for the City of New Braunfels and/or TxDOT Local Government Projects, and success in performing this service (30 points)**
 - A. Provide verifiable examples of **at least three (3)** similar projects completed in the last five (5) years by the principal firm and sub-consultants, including:
 - Project name and location
 - Short description of services provided
 - Start and completion dates
 - Project budget, and final project costs e.g. history of accomplishing services within established budget, include planned versus actual.
 - Client name, contact person, telephone number, and email address
 - History of meeting project schedules
 6. **TAB 5: Proposed personnel including relevant experience, background, and task assignment (20 points)**
 - Indicate how the work described in this RFQ will fit into the total workload of the firm. Provide brief resume summaries for key personnel involved and the role

they will perform (principal-in-charge, project manager, consulting engineer, etc.). Include previous experience on similar projects and staff availability to perform services.

- List any sub-consultants intended to be used and the qualifications, expertise, licensing, and/or certification.

7. **TAB 6:** Proposed timeline of project and tasks (10 points)

8. Other Support and Attachments

- Conflict of Interest Form (per Section 7.15)
- Certificate of Interested Parties – Form 1295 (per Section 7.16)
- Proof of Insurance. Provide evidence of professional liability for errors and omissions coverage, and other fiduciary coverage policy with a minimum limit of \$1,000,000; include the name and address of the coverage provider and a copy of proof of coverage.
- Vendor Certifications – Attachment 1

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

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

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

4.6. WHAT IS NOT ACCEPTED:

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

SECTION 5 – SELECTION INFORMATION

5.1 SELECTION AND AWARD PROCESS:

This solicitation provides information necessary to prepare and submit qualifications for consideration and ranking by the City. By submitting its Statement of Qualifications (SOQ) in response to this RFQ, Respondent accepts the evaluation process as outlined in the following section, acknowledges, and accepts that determination of the “most qualified” firm may require subjective judgements by the City.

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

Two Step Process

- **Step 1:** Review, analyze and evaluate the of Statements of Qualifications (SOQs).
 - All respondents’ SOQs will be ranked based upon the selection criteria established in the solicitation.
 - The selection committee will rank the firms in order of the most qualified, based on demonstrated competence and qualifications to perform the services and then make a determination based upon the final ranking.
 - City staff may select short-listed firms based on an evaluation of the written materials submitted. Short-listed firms may be asked to submit additional information and may be interviewed where they will give a presentation and answer questions.
 - **Step 2:** Fee Proposal and Contract Negotiations.
 - City staff may initiate an interview with the top ranked firms.
 - Staff will meet with the selected firm to develop a finalized scope of work and cost proposal.
 - Staff will make a recommendation to the City Council for award of a contract. The contract will be subject to approval by the New Braunfels’ City Council.
 - After contract award, the Purchasing Department will **return all sealed, unopened Dollar Cost Fee Estimates** to the non-awarded firms.
- 5.1.2** Professional services will be procured in accordance with Chapter 2254 of the Government Code, Title 10, Subchapter A, Professional Services. Selection of the most highly qualified respondent(s) will be made based on demonstrated competence and qualifications as determined by the City of New Braunfels based on the Qualifications submitted in response to this solicitation.
- 5.1.3** This solicitation does not constitute a commitment by the City to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related-work by any the submitter. The City reserves the right to waive responses to any part of this request if, in its sole judgment, it determines that it is in the best interests of the City to do so. The City may require any submitter to participate in negotiations and to submit such other information or documentation as it may deem necessary as conditions of awarding a contract. The City reserves the right to vary or waive requirements for different submitters as shall fit the City’s needs.

5.2 SELECTION CRITERIA:

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

5.2.1 Evaluation Standard; Evaluation Committee. A committee comprised of City of New Braunfels staff will evaluate the SOQs submitted. SOQs will be evaluated on evidence of understanding of the issues and challenges, the objectives to be achieved, and the technical and administrative capabilities in relation to the needs of the project. The following criteria are those that will be applied in the evaluation of the SOQ:

Evaluation Criteria:

- **40 Points:** **Understanding of the project and project approach.**
- **30 Points:** Experience in providing similar services for the City of New Braunfels and other agencies, and success in performing this service.
- **15 Points:** Proposed personnel including relevant experience, background, and task assignment
- **10 Points:** Proposed personnel including relevant experience, background, and task assignment
- **Pass/Fail:** Vender Certifications

TOTAL POSSIBLE POINTS: 100

5.2.2 For this RFQ, Respondent's qualifications will be evaluated, and the most qualified Respondent will be selected, subject to negotiation of fair and reasonable compensation. Negotiations may be undertaken with the service provider whose SOQ best addresses the needs of the proposed project and demonstrates the ability and experience to perform the work. Award of the contract will be to the responsive service provider whose SOQ is most advantageous to the City.

5.2.3 References: Contact information for client references must be current. Please include contracts awarded to your company as referenced in Section 4.4.5, Project Experience, complete with a current point of contact for the client, telephone number, email address if available, summary of the work performed, and a contract term.

5.2.4 SOQ Form: Responses of excessive length or complexity are discouraged. The City reserves the right to include the selected SOQ, or any part of the selected proposal, in the final design contract. Emphasis is on completeness and clarity of content.

5.2.5 Other Considerations: The City reserves the right to request additional information or consider historical information and facts, whether gained from the RFQ, references, or any other source, in the evaluation process, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent's background, personnel, experience, financial and other references, management practices, exceptions to the RFQ or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.

5.3 LIMITATIONS:

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

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

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

5.3.4 Firm or Individual's Obligation Regarding Evaluation:

- a. Submission of Information. Submitters are cautioned that it is each firm and or individual's sole responsibility to submit information related to the evaluation categories, and the City is under no obligation to solicit such information if it is not included with the SOQ. Failure of a firm or individual to submit such information may cause an adverse impact on the evaluation of the specific SOQ.
- b. Submitter Review of RFQ. Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFQ and their responses. Failure to do so will be at the firm and/or individual's risk and will not be a determinative factor when awarding the contract for services.

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

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

5.4 SOQ SPECIFICATIONS:

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

5.4.2 Inquiries. In order to ensure fair and objective evaluation, all questions related to this RFQ should be addressed only to the persons named in Section 4.3 of this solicitation.

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

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

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

SECTION 6 - CONTRACT TERMS AND CONDITIONS

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

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

6.3. ELEMENTS OF CONTRACT

1. **RFQ.** This Request for Qualifications is an invitation for individuals and companies to submit Statements of Qualifications (SOQs) only.
2. **SOQ.** The submittal of a Statement of Qualifications (SOQ) by a firm or individual is an indication of the ability of the firm or individual to perform the requested services.
3. **UDC.** Unified Development Code.
4. **Award is Acceptance.** The selection of a firm and award of a professional services agreement by the New Braunfels' City Council based upon acceptance on the part of the City, thereby resulting in a binding agreement between the City and the selected firm or individual.
5. **Consideration.** Consideration consists of the services to be performed under the contract awarded in exchange for compensation, based upon a final negotiated price, to be paid by the City to the selected firm.
6. **Agreement; Exceptions.**
 - a. Submission of a SOQ is a representation by a submitter that the submitting firm or individual agrees to the terms, conditions, and other provisions contained in the RFQ, unless the submitter clearly and specifically presents in its SOQ any exceptions to the terms, conditions, and other provisions contained in the RFQ.
 - b. Exceptions presented in a SOQ are not to be considered incorporated into the agreement between the City and the selected firm or individual unless and until the City agrees to accept such exceptions.
 - c. The selected firm must acknowledge and agree that the negotiated agreement resulting from this RFQ includes the terms, conditions, and other provisions contained in the RFQ, the SOQ selected (including any exceptions accepted by the City) which

is acceptable to the City and is not in conflict or contravention of the RFQ, and any other documents mutually agreed upon by the City and the selected firm. Said terms and conditions shall be applicable during the entire contract term.

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

6.4 RIGHT TO TERMINATE: NOTICE REQUIREMENT

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

6.5 SELECTED FIRM OBLIGATION TO MAKE REPORTS

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

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

6.6 Assignment; Transfer. The selected Firm shall not sell, assign, transfer, or convey any contract or other benefits resulting from this RFQ, in whole or in part, without the prior written consent of the City.

6.7 FORCE MAJEURE

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

6.8 INSURANCE AND LIABILITY

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

1. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.

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

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

General Aggregate	-	\$1,000,000
Products/Completed Operations Aggregate	-	\$1,000,000
Each Occurrence	-	\$ 500,000
Personal/Advertising Injury	-	\$ 500,000
Medical Payments (Any One Person)	-	\$ 5,000
Property Damage	-	\$ 100,000
 - c. Professional Liability Errors and Omissions

Per Occurrence	-	\$ 300,000
Aggregate	-	\$ 500,000
 - d. Worker's Compensation

Employers Liability	-	As Statutorily required
Each Accident	-	\$1,000,000
Policy Limit by Disease	-	\$1,000,000
Each Employee by Disease	-	\$1,000,000

ACTUAL FINALIZED INSURANCE COVERAGE WILL ONLY BE REQUIRED OF THE SELECTED PROPOSAL. PROPOSALS CAN SEND THEIR CERTIFICATE OF INSURANCE "FOR INFORMATION PURPOSES ONLY" WITH THEIR PROPOSAL.

6.9 PAYMENT AND INVOICING REQUIREMENTS

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

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

Email Address: AccountingTechnicians@nbtexas.org

1. All payment terms will be "Net 30 Days" unless otherwise specified in the solicitation.

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

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

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

6.10 INDEPENDENT CONTRACTOR

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

6.11 SUSTAINED DAMAGES

In the event the City terminates the awarded contract for any reason, the selected Firm shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the contract by the selected Firm or otherwise, and the City may withhold any payments to the selected

Firm for the purpose of an offset until such time as the amount of damages due the City from the selected Firm can be determined.

6.12 CONFIDENTIALITY OF DOCUMENTS

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

6.13 SUBCONTRACTING PROPOSAL

If subcontracting with another company or an individual on this project, this must be identified in your proposal, and the subcontractor's credentials must be submitted with your proposal for the City's review and evaluation consideration.

6.14 INDEMNIFICATION

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

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

Acceptance and approval of firm's documents received by the City shall not constitute nor be deemed a release of this responsibility and liability of Consultant, its employees, associates, agents

and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by Consultant, its employees, contractor, agents and consultants.

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

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

6.15 MISCELLANEOUS

- a. All costs directly or indirectly related to the preparation of a response to this SOQ shall be the sole responsibility of and shall be borne by the firm.
- b. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Firm, or to allow corrections of errors or omissions.
- c. The City reserves the right to retain all proposals submitted and to use non-confidential information in a SOQ regardless of whether or not that SOQ is selected.
- d. Each SOQ shall state that it is valid for a period of one hundred twenty (120) days from the date of opening of the SOQ by the City.

6.16 NON-NEGOTIABLE TERMS

The following terms or conditions are not negotiable:

- a. **Unfunded Liability.** The City will not incur a debt or obligation to pay selected Firm any amounts the City does not have the current funds available to pay, unless the contract includes a provision for the City to appropriate funding for the debt or obligation.
- b. **Advance Payments.** The City will not make advance payments to a selected Firm or any third party pursuant to this RFQ or resulting contract.
- c. **Gift of Public Property.** The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Firm.
- d. **Procurement Laws.** The City will not agree to any terms or conditions that cause the City to violate any federal, Texas, or local procurement laws, including its own charter.
- e. **Limitation of Liability.** The City will not agree to allow the selected Firm to limit its liability for breach or default of contract to the contract amount or to the amount the City has paid up to the time of the breach or default.

- f. **Attorney's fees; Legal Costs.** The City will not agree to pay the selected Firm attorney's fees or other legal costs under any circumstances.
- g. **Delinquent Payments; Interest.** The City will not consider a payment delinquent, which is made within 30 days of receipt of the selected Firm's approved invoice, in accordance with Texas law. If the City does not pay what is due and owing within the 30 days, the City will not agree to pay more than 1% interest per month on the overdue amount, in accordance with Texas law.
- h. **Venue; Applicable Law.** This RFQ and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the RFQ are fully performable in Comal County, Texas and venue for any dispute regarding contract shall be in Comal County, Texas.

6.17 CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)

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

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

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

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

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

6.18 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

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

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

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

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

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

6.19 VENUE

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

VENDOR CERTIFICATIONS

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

Provide responses that are clear and comprehensive.

Company name: _____

Permanent main office address: _____
 Street City, ST ZIP

Tax ID No.: _____

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

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

DEBARMENT/SUSPENSION INFORMATION:

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

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

CERTIFICATIONS:

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

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

2. NON-COLLUSION CERTIFICATION:

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

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

3. HOUSE BILL 89 VERIFICATION

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

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

Pursuant to Section 2270.001, Texas Government Code:

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

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

ACKNOWLEDGEMENT

THE STATE
OF TEXAS
COUNTY OF
COMAL

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

Company's Name

Signature, Authorized Representative of Respondent

Title

**[PROJECT TITLE]
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered into the _ day of JUNE _, by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as CITY and [FIRM], hereinafter referred to as “CONSULTANT/ARCHITECT”.

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

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

NOW, THEREFORE, all parties agree as follows:

I. GENERAL

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

II. SERVICES

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

PROVIDE ENGINEERING SERVICES REQUIRED FOR THE PREPARATION OF PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) AND RELATED DOCUMENTS FOR THE IMPROVEMENT OF BARBAROSA ROAD FROM FM 1101 TO FM 758 AS DESCRIBED IN THE SCOPE OF SERVICES MARKED EXHIBIT “A”.

FURTHER, EXHIBIT “A” SHALL INCLUDE PERFORMANCE MEASURES UNDER THIS AGREEMENT, INCLUDING THE FOLLOWING FACTORS: ADHERENCE TO SCHEDULE; EFFECTIVE COMMUNICATION WITH CITY STAFF; AND OVERALL QUALITY OF DESIGN DELIVERABLES.

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

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

CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

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

III. PAYMENT

The parties agree that CONSULTANT shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "B". The contract amount specified shall not exceed \$ _____. All estimated fees set forth in Exhibit "B" shall be billed on an hourly not to exceed basis. In the event the full estimated fee amount in Exhibit "B" is not required to complete a specific task, the CONSULTANT shall not bill the remaining balance, resulting in savings to the City. The contract amount specified in Exhibit "B" shall not be exceeded without written permission of the CITY.

IV. TIME FOR PERFORMANCE

A. CONSULTANT agrees to commence work immediately upon execution of this Agreement and to proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT, to completion as described in the Completion Schedule, attached hereto as Exhibit "C" and hereby made a part of this Agreement. All work shall be completed on or before the **September 23, 2022** deadline. The CONSULTANT agrees to pay City \$250.00 for each calendar day after the above deadline until work is complete.

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

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

V. DOCUMENTS

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

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

part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of service with respect to such other work except where CONSULTANT participates in such other work.

C. CONSULTANT agrees to and does hereby grant to CITY a royalty-free license to all such instruments of service which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. CONSULTANT, after completion of the project, agrees to furnish the originals of all such instruments of service to the CITY.

D. All text documents supplied to CITY as provided herein shall be in Word 2003 or fully compatible with Word 2003. Unless otherwise specified, all design drawings supplied to CITY as provided herein shall be in Adobe PDF format.

VI. TERMINATION

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

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

VII. INSURANCE

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

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

C. ARCHITECT shall provide general Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The general Liability Insurance must name the CITY as an additional Insured.

D. CONSULTANT shall also provide and maintain Professional Liability Errors and Omissions Insurance coverage to protect CONSULTANT and CITY from liability arising out of the performance of professional services, if any, under this Agreement. Such coverage shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Such insurance shall be kept in effect for four years after the completion of the contract. If CONSULTANT fails to maintain the insurance covered during that time,

CITY may pay the premiums to keep the insurance in effect and recover the cost from the CONSULTANT.

E. A signed Certificate of Insurance, satisfactory to CITY, showing compliance with the requirements of this Article shall be furnished to CITY before any services are performed. Such Certificate shall provide 30 days written notice to CITY prior to the cancellation or modification of any insurance referred to therein and continue to issue such certificate for four years after completion of the contract.

VIII. INDEMNIFICATION FOR INJURY AND PERFORMANCE

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

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

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

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

IX. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

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

X. INDEMNIFICATION FOR PERFORMANCE

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

XI. ASSIGNMENT

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

XII. APPLICABLE LAWS

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

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

XIII. DEFAULT OF CONSULTANT

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

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

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

XIV. ADJUSTMENTS IN SERVICES

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

XV. EXECUTION BECOMES EFFECTIVE

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

XVI. AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

XVII. GENDER AND NUMBER

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

XVIII. COMPLETE CONTRACT

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

XIX. NOTICES AND AUTHORITY

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

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

BY:
TITLE:
ADDRESS:

(Signatures on Following Page)

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

OWNER
THE CITY OF NEW BRAUNFELS

CONSULTANT
[_____]

BY: _____

BY: _____

TITLE: CITY MANAGER

TITLE:

ADDRESS:
550 Landa Street
New Braunfels, TX 78130

ADDRESS:

DRAFT

EXHIBIT A
SCOPE OF SERVICES

DRAFT

EXHIBIT B
PAYMENT SCHEDULE

(INCLUDE RATE SHEET HERE)

1. Invoices shall be directed to accounting@nbtexas.org and shall include:
 - a. Purchase order number prominently displayed on each invoice.
 - b. Unique invoice number
 - c. Invoice period
 - d. Invoice or billing date
 - e. Timesheets for services performed on a time and materials basis
 - f. Receipts for all materials used for services performed on a time and materials basis
 - g. Itemization of all deliverables completed and delivered to the CITY
 - h. Records supporting all reimbursable expenses, including without limitation for lodging, meals, mileage, airfare and car rentals
2. Payments may be based on completion of the services, fulfillment of milestones, or delivery of deliverables as agreed in the order. CONSULTANT shall invoice CITY once a month for orders in progress that have activity for that month. Final payment by CITY shall not waive any rights and remedies that CITY has and shall not release CONSULTANT from any duties and obligations set forth in the contract documents.
3. No invoice shall be considered complete or payable unless all documentation is submitted with invoice supporting reimbursable and CITY approved expenses, such as time sheets, transportation, lodging and meal expenses.
4. Invoices shall be supported by billing information, tie to a specific order and shall detail amount spent/remaining. Direct expenses shall include supporting detail showing the nature and extent of the expenses and shall reference the appropriate deliverable, milestone payment, and order line detail. Labor charges shall detail the name and category of the person providing services and shall show the hours worked by each category/name, the associated rate, and the extended total for the invoice. Supporting documentation shall also be submitted for sub-contractor work invoiced.
5. Payment terms are Net 30 Days.

EXHIBIT C
COMPLETION SCHEDULE

DRAFT