

# CITY OF NEW BRAUNFELS



## REQUEST FOR COMPETITIVE SEALED PROPOSALS for

**Elizabeth Ave. Storm Water Treatment – Water Quality Retrofit**  
Solicitation # CSP 21-014

Date Issued:

April 27, 2021

**RESPONSES MUST BE RECEIVED NO LATER THAN:  
3:00 P.M. CST May 19, 2021**

Proposal Bond: 5%	Performance Bond: 100%	Payment Bond: 100%
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Location: New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130

New Braunfels Purchasing Department: Phone: 830-221-4389  
Email: [bcoleman@nbtexas.org](mailto:bcoleman@nbtexas.org)



## SOLICITATION AND OFFER

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

**Solicitation Number:** CSP 21-014  
Elizabeth Ave. Storm Water Treatment-Water  
Quality Retrofit

Invitation for Bid (IFB)  
 Competitive Sealed Proposal (CSP)

**Date Issued:**  
**April 27, 2021**

### SOLICITATION

Questions may be submitted until close of business day on **May 7, 2021, 5:00 P.M. (CST)**.

Proposers must submit proposals in a signed original, with 1 hard copy, and 1 in digital format (.pdf File on USB Thumb Drive).

Proposals will be **received and read aloud** at the New Braunfels City Hall, City Secretary Office at the address shown above until: **3:00 P.M. (CST), May 19, 2021**. Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:

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

Purchasing Representative

Barbara Coleman

Purchasing Manager

Email : BColeman@nbtexas.org

Phone : (830) 221-4389

Fax: (830) 608-2112

5% Proposal Bond Required:  YES  NO

(If YES, refer to information in Section 5.)

100% Payment Bond Required:  YES  NO

(If YES, refer to information in Section 5.)

100% Performance Bond Required:  YES  NO

(If YES, refer to information in Section 5.)

### OFFER

(This portion must be fully completed by Proposer.)

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

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

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.

SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT AND ALL REQUESTED COPIES SUBMITTED.

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

Name and Address of Proposer:	Name and Title of Person Authorized to Sign Offer:  E-Mail Address:  Telephone Number:  Fax Number:
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Signature:	Date:
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 City of New Braunfels (CONB) plans and specifications, the current version of the *City of San Antonio Standard Specifications for Construction* (as amended and revised) will apply for this project where applicable.

*The San Antonio River Basin Low Impact Development Technical Guidance Manual* will apply for this as they are referenced for in the construction drawings and bid form.

**STANDARD DETAILS & TECHNICAL  
SPECIFICATIONS:**

The Standard Details for this Project are included in the construction drawings. In the event a standard detail is not shown, the current version of the *City of San Antonio Standard Details for Construction*, TxDOT Standard Details, and *The San Antonio River Basin Low Impact Development Technical Guidance Manual* (as amended and revised) will apply for this project where applicable.

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

**SECTION 3**  
**INSTRUCTIONS FOR RESPONSE**

### **03.01 AVAILABLE DOCUMENTS**

Proposals are due **May 19, 2021 at 3:00 P.M. (CST)** at the City of New Braunfels - City Secretary's Office at 550 Landa Street, New Braunfels, Texas 78130 and proposals will be publicly opened and read aloud. Responses **WILL** be accepted in person, by United States Mail, or by private courier service. Responses **WILL NOT** be accepted via oral communication, telephone, electronic mail, telegraphic transmission, or facsimile transmission.

Solicitation documents may be obtained from:

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

### **03.02 VIRTUAL PRE-PROPOSAL CONFERENCE**

A Pre-Proposal Conference will not be hosted for this project.

### **03.03 SUBMISSION OF PROPOSAL**

Companies responding to the CSP must follow the instructions below.

The statements which follow request information that the Evaluation Committee will utilize to evaluate the proposal. Each statement should be specifically addressed. Failure to respond to a statement may result in a proposal being deemed non-responsive and therefore not considered in the selection Process.

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that proposals be submitted with **1 original master (marked original), 1 hardcopy, and 1 digital copy in a .pdf file format saved on a USB thumb drive**. Responses shall be tabbed and labeled as indicated for consistency.

1. **TAB 1 – Solicitation and Offer Form**; completed and signed.
2. **TAB 1 – Acknowledgment of Addenda**, if applicable.
3. **TAB 2 – Cover Letter**: Name and address of the Proposer, as well as a brief description of the firm and its history
4. **TAB 3 – Executive Summary**: A brief summary highlighting the most important points of the proposal.
5. **TAB 4 – Cost Proposal Form (Exhibit 1)**
6. **TAB 5 – Vendor Certifications (Exhibit 4)**
7. **TAB 6 – Plan and Schedule** as required in Section 4.10.C.3.
8. **TAB 7 – Acceptable Documentation**
  - Bond Form - Proposal Guaranty/Bid Bond in an amount no less than five percent (5%) of price proposal (Exhibit 2)
  - One copy of Certificate of Insurance completed and signed (Section 4.17).
  - Conflict of Interest (Section 4.18.11).

- Certificate of Interested Parties; Form 1295 (Section 4.18.10).

9. **TAB 8** – Required information indicated in Drawings, if applicable.

10. **Required after contract award** – Performance, Payment and Maintenance Bonds – (Exhibit 2)

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

**Delivery**

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

**Labeled**

**CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit**  
**Project Due: May 19, 2021 3:00 PM (CST)**

When sent by mail, Express Mail, or delivery service, sealed Proposal (marked as indicated above) shall be enclosed in an additional envelope clearly identified on outside as a Proposal to Owner with Proposer's name and address, Project name, and Proposal date and time. It is the sole responsibility of the Proposer to ensure timely delivery of Proposal. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Proposer.

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

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

**03.05 AUTHORIZED CONTACT PERSONS**

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

CONTRACT PROCUREMENT REPRESENTATIVE:	Barbara Coleman	830-221-4389
PROJECT MANAGER:	Adam Michie	830-221-4079

**END OF SECTION**

**SECTION 4****GENERAL INFORMATION****04.01 PROJECT DESCRIPTION**

The City of New Braunfels seeks proposals from qualified vendors for the construction of a bioretention stormwater treatment basin at the intersection of Elizabeth Avenue and Landa Drive in New Braunfels, Texas.

The intent of the project is to treat and infiltrate stormwater runoff from the proposed parking lot and Elizabeth Avenue Street improvements prior to discharging to the Comal River. Project plans entitled "City of New Braunfels-Elizabeth Avenue Stormwater Treatment, Water Quality Retrofit" have been developed by Doucet and Associates and are attached to this solicitation.

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

To include, but is not limited to, the following: demolition/ removal of existing asphalt, excavation of the bioretention basin, installation of underdrain system and outfall, boring, concrete work, fencing, installation of biofiltration media layers and landscape planting/revegetation.

Engineer's Opinion of Probable Construction Costs for the project is: **\$92,000.00**.

**04.02 SCOPE OF WORK**

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

The project includes but is not limited to the following: demolition/ removal of existing asphalt, excavation of the bioretention basin, installation of underdrain system and outfall, boring, concrete work, fencing, installation of biofiltration media layers and landscape planting/ revegetation.

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

The City is seeking a construction company with experience in drainage and stormwater treatment infrastructure construction.

**Statement of Work:**

Refer to specification plans provided a part of this bid which outlines details of the project's general notes, demolition, erosion & sedimentation plan, water quality pond

plan, water quality pond cross sections, water quality calculations, grading & drainage plan and landscaping plan.

The below 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.

- Contractor to provide Demolition Services per specifications
- Contractor to remove and haul off existing asphalt, as instructed by the City
- Contractor to provide excavation of the bioretention basins
- Contractor to provide installation of underdrain system and outfall
- Contractor to provide installation of biofiltration media layers
- Contractor to provide concrete work, pipe boring below the road, and fencing
- Contractor to provide landscape planting/revegetation per specifications
- Contractor shall coordinate all work, inspections, and approvals with the City of New Braunfels and New Braunfels Utilities.
- Contractor shall comply with the United States Occupational Safety & Health Administration regulations on this project.
- Contractor - Methods & Means of construction shall be compliant with all applicable Federal, State, & Local regulations. This includes obtaining all necessary permits and inspections.
- Contractor to adhere to City of New Braunfels construction administration procedures.
- Contractor shall maintain & submit all project records such as record drawings, project manuals, and warranties for approval by the City of New Braunfels.

This project shall require expertise in the following construction areas:

- Demolition Services
- Erosion & sedimentation planning
- Water quality ponds
- Water quality calculations
- Asphalt work
- Concrete work
- Storm drain utilities
- Grading & drainage planning
- Drainage reconstruction
- Excavation of the bioretention basins
- Installation of underdrain system and outfall
- Installation of biofiltration media layers
- Fencing
- Landscape planting/revegetation

**04.03 DESIGN ENGINEER**

Tom Hegemier, PE, of Doucet and Associates, Inc. 7401B Highway 71 West, Suite 160, Austin, Texas, 78735 is the Design Engineer for the Project.

**04.04 CONTRACT TIMES****04.04.01 Time of the Essence**

Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

**04.04.02 Days to Achieve Substantial Completion and Final Payment**

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

**04.04.03 Liquidated Damages**

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

**04.05 CONTRACT PRICE**

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

- A. For all Work, at the unit prices stated in Contractor's Proposal.
- B. Installation costs should include the cost all required parts, tools, and personnel, including fiber cable. It is expected the construction related to this proposal will be complete before the newly constructed buildings are turned over to the City of New Braunfels. Costs must include the future finishing of the installation of the fiber optic cable into the building as determined by the City of New Braunfels. As mentioned previously, Vendors must sign a confidentiality agreement prior to receiving the Engineering Drawings associated with this proposal. These drawings will provide vendors with the specific route and a required parts list, including parts specifications. This project will be broken into 3 phases. For each of the 3 phases, the City will require a cost and construction timeline for each phase. If multiple phases can be constructed simultaneously, please indicate such. The quantities shown on the plans and the bid documents are estimated quantities and based on the plan set and to be used for bidding purposes only. The contractor is responsible for determining actual quantities. The contractor shall be responsible for resolving any perceived discrepancies in the quantities prior to beginning any construction work.

## **04.06 PAYMENT PROCEDURES**

### **04.06.01 Submittal and Processing of Payments**

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

### **04.06.02 Progress Payments; Retainage**

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

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

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

### **04.06.03 Final Payment**

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

**04.07 DEVIATION FROM SPECIFICATION/ REQUIREMENTS**

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

**04.08 CONTRACTOR'S REPRESENTATIONS**

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

- A. Contractor has examined and carefully studied the contract documents and the other related data identified in the bidding documents.
- B. Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, or performance of the work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the bidding documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the contract price, within the contract times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given the Purchasing Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City of New Braunfels is acceptable to Contractor.

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

## 04.09 CONTRACT DOCUMENTS

### Contents

- A. Contract Documents consist of the following:
  1. Contract Award Form & Agreement
  2. Project Manual (Sections 6 - 29), including the General Conditions
  3. Competitive Proposal
    - a. Solicitation and Offer Form
    - b. Performance Bond, Exhibit 2
    - c. Payment Bond, Exhibit 2
    - d. Warranty Bond, Exhibit 2
    - e. General Information
    - f. Terms and Conditions
    - g. Specifications as listed in the table of contents of the Project Manual
    - h. Addenda (if any)
    - i. Exhibits and Attachments (Cost Proposal Form, Prevailing Wage Schedule, Vendor Certifications, Supplementary Conditions, Supplementary Provisions, Plans, and Technical Specifications)
  4. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed
    - b. Work Change Directives
    - c. Contract Change Orders
- B. The documents listed in Paragraph 04.06 are attached to this contract except as expressly noted otherwise above.
- C. There are no Contract Documents other than those listed above in Section 04.06.
- D. The Contract Documents may only be amended, modified, or supplemented as provided therein.
- E. ORDER OF PRECEDENCE. In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (1) Change Orders, Work Change Directives, and written amendments to the Contract; (2) the Contract; (3) Supplemental Conditions, if any; (4) General Conditions; (5) the drawings, specifications, and addenda issued prior to the execution of the Contract; (6) Competitive Proposal, including Solicitation Offer and Award, Performance Bond, Payment Bond, General Information, Terms and Conditions, Exhibits and Attachments. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency.

#### 04.10 COMPETITIVE PROPOSALS

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

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

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

Percent	Description
60	<b>Cost Proposal Price</b>
20	<b>Proposed Project Timelines</b>
20	<b>Experience and Qualifications</b>

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

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

**2. Relevant Experience and Other Considerations – (20 Points)**

**See Exhibit 4:** Qualifications of Proposer

- a) Experience as a general contractor with specific experience in the construction of stormwater infrastructure and stormwater treatment facilities

of the same or similar type, size, nature and class as the project being proposed.

- Minimum experience is indicated in this section 4.10.C.2C and Exhibit 4. Consideration will be given to the number of years of the Proponent has been in business.
- Previous work with the City will be considered.

- b) If you are using a sub for this work provide the sub-contractors specific experience in the construction of stormwater infrastructure and stormwater treatment facilities 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 \$50,000 that your company is presently constructing as a Prime Contractor or sub-contractor;
  - the Prime Contractor or sub-contractor on projects with the CONB and NBU as the Owner.
- d) Other Considerations – such as historical information and facts as per Section 4.10.D “Other Considerations” and qualifications from Exhibit 4.

**3. Plan and Schedule – (20 Points)**

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

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

**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.
- c) This is a Pass or Fail. Any Proposer receiving a score of “Fail” will be automatically disqualified.

**Total Points Possible: 100 Points**

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

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. Interviews will provide a maximum of 10 additional points, per Street Project, as applicable.

F. **Proposed Project Schedule:**

<b>DATE</b>	<b>MILESTONE</b>
April 27, 2021	City of New Braunfels Website: <a href="http://www.nbtexas.org/2694/Active-Solicitations">http://www.nbtexas.org/2694/Active-Solicitations</a> CSP issued on <a href="https://www.bidnetdirect.com/texas/city-of-new-braunfels">https://www.bidnetdirect.com/texas/city-of-new-braunfels</a>
May 7, 2021	Deadline for questions and requests for clarification
May 19, 2021	Competitive Sealed Proposal (CSP) submission deadline Time, address and Zoom link are provided in Section 3, Item 03.01.
June 2021	Anticipated approval, and award of Contract, by City Council

#### **04.11 GENERAL CONTRACTOR REGISTRATION**

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

#### **04.12 PROPOSAL GUARANTY**

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

#### **04.13 CONTRACT SECURITY**

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

**04.14 PERFORMANCE AND PAYMENT BONDS**

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

**04.15 WARRANTY BOND**

Not Required for this Project.

**04.16 MINIMUM WAGES AND PREVAILING WAGE RATES**

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

Refer to Exhibit 3, "Prevailing Wage Schedule"

**04.17 INSURANCE AND LIABILITY COVERAGE**

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

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

Submit a certificate of insurance reflecting coverage as follows:

a. Automobile Liability:

Bodily Injury (Each person)	-	\$1,000,000.00
Bodily Injury (Each accident)	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00

b. General Liability (Including Contractual Liability):

Bodily Injury	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
Aggregate	-	\$2,000,000.00

c. Excess Liability:

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

<u>Or Employer's Liability Insurance:</u>	-	\$1,000,000.00
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Each Accident	-	\$1,000,000.00
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Disease each employee	-	\$1,000,000.00
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Policy Limit	-	\$1,000,000.00
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**04.18 MISCELLANEOUS****04.18.01 Terms**

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

**04.18.02 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.

**04.18.03 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.

**04.18.04 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.

**04.18.05 Contractor's Certifications**

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

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made
  1. to influence the bidding process or the execution of the Contract to the detriment of Owner,
  2. to establish Bid or Contract prices at artificial non-competitive levels, or
  3. to deprive Owner of the benefits of free and open competition;

- C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**04.18.06 Certification of House Bill 89**

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

**04.18.07 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.

**04.18.08 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.

**04.18.09 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.

#### **04.18.10 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.

#### **04.18.11 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 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>, unless otherwise notified.

### **ARTICLE 3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

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

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

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

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

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

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

#### **ARTICLE 4 INTERPRETATIONS AND ADDENDA**

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

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

#### **ARTICLE 5 PROPOSAL GUARANTY**

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

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

**ARTICLE 6 PERFORMANCE AND PAYMENT BONDS**

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

**ARTICLE 7 WARRANTY BOND**

**05.07.01** Warranty Bond is not required for this solicitation.

**ARTICLE 8 CONTRACT TIME**

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

**ARTICLE 9 LIQUIDATED DAMAGES**

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

**ARTICLE 10 SUBSTITUTE AND "OR-EQUAL" ITEMS**

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

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

## ARTICLE 11 SUBCONTRACTORS, SUPPLIERS AND OTHERS

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

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

## ARTICLE 12 PREPARATION OF PROPOSAL

**05.12.01** The Proposal Form is included with the Proposal Documents.

- A. All blanks on the Proposal Form shall be completed. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form. A Proposal price shall be indicated for each proposal item or unit price listed therein. In the case of optional alternatives, the words "No Proposal," "No Change," or "Not Applicable" may be entered.
- B. All names shall be printed in ink below the signatures.
- C. The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- D. Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.
- E. The Proposal shall contain evidence of Proposer's authority and qualification to do business in the state where the Project is located, or Proposer shall covenant in writing to obtain such authority and qualification prior to award of the Contract and

attach such covenant to the Proposal. Proposer's state Contractor license number, if any, shall also be shown on the Proposal Form.

## **ARTICLE 13 SUBMISSION OF PROPOSAL**

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

## **ARTICLE 14 BASIS OF PROPOSAL; COMPARISON OF COSTS**

### **05.14.01 Unit Price**

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

### **05.14.02 Lump Sum Price**

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

## **ARTICLE 15 MODIFICATION AND WITHDRAWAL OF PROPOSALS**

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

### **05.15.02 Changes**

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

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

If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract, whether or not changed by the order, the City shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order. However, if the City decides that the facts justify it, the City may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

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

## **ARTICLE 16 OPENING OF PROPOSALS**

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

## **ARTICLE 17 PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE**

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

## **ARTICLE 18 AWARD OF CONTRACT**

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 19 CONTRACT SECURITY**

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

## **ARTICLE 20 SALES TAX**

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

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

## **ARTICLE 21 LAWS AND REGULATIONS**

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

## **ARTICLE 22 RESIDENT PROPOSERS**

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

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

## **ARTICLE 23 GENERAL CONTRACTOR REGISTRATION**

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

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

## **ARTICLE 24 PREVAILING WAGES**

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

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

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

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

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

## **ARTICLE 25 EMPLOYMENT REQUIREMENTS AND WAGE RATES**

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

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

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

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

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

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

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

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

## **ARTICLE 26 RELEASE OF INFORMATION**

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

## **ARTICLE 27 DISCLOSURE OF PROPRIETARY INFORMATION**

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

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

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

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

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

**ARTICLE 28 OTHER TERMS OF AGREEMENT****05.28.01 Severability**

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

**05.28.02 Governing Law**

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

**05.28.03 Venue**

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

**END OF SECTION**

**Bidding Requirements, Contract Forms and Conditions of the Contract  
COST PROPOSAL FORM  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 1**

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS**  
**CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit**  
**Exhibit 2**

## BID BOND

THE STATE OF TEXAS §  
§  
§  
COUNTY OF §  
§  
§

KNOW ALL BY THESE PRESENTS:

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

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Proposal, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which is hereto attached and made a part hereof for all purposes, for the construction of the Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit.

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 2**

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

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**PRINCIPAL**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(S E A L)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
**SURETY**

ATTEST:

\_\_\_\_\_  
Secretary

(S E A L)

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Attorney in Fact

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Surety

Telephone Number: \_\_\_\_\_

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 2**

## **PERFORMANCE BOND**

THE STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

§  
§  
§

KNOW ALL BY THESE PRESENTS:

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

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, herein referred to as "the Contract" and incorporated herein and made a part hereof for all purposes, for the construction of the following project: Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit.

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 2**

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

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

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

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

---

**PRINCIPAL**

ATTEST:

---

(Principal) Secretary

(S E A L)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

---

Witness as to Principal

Telephone Number: \_\_\_\_\_

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**SURETY**

ATTEST:

---

Secretary

(S E A L)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attorney in Fact

Address: \_\_\_\_\_

\_\_\_\_\_

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 2**

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Witness as to Surety

Telephone Number: \_\_\_\_\_

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

Approved as to Form:

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS**  
**CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit**  
**Exhibit 2**

# PAYMENT BOND

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

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

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which contract is hereby referred to herein as "the Contract" and is incorporated herein to the same extent as if copied at length, for the following project: Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit.

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

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 2**

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

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

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

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**PRINCIPAL**

ATTEST:

---

(Principal) Secretary

(S E A L)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

---

Witness as to Principal

Telephone Number: \_\_\_\_\_

---

**SURETY**

ATTEST:

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Secretary

(S E A L)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attorney in Fact

Address: \_\_\_\_\_

\_\_\_\_\_

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Witness as to Surety

Telephone Number: \_\_\_\_\_

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
BOND FORMS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
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Approved as to Form:

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Bidding Requirements, Contract Forms and Conditions of the Contract  
PREVAILING WAGE RATES AND PAYROLL REPORTING  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 3

**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.

**Bidding Requirements, Contract Forms and Conditions of the Contract  
PREVAILING WAGE RATES AND PAYROLL REPORTING  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
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"General Decision Number: TX20210007 01/01/2021

Superseded General Decision Number: TX20200007

State: Texas

Construction Types: Heavy and Highway

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

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

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

Modification Number	Publication Date
0	01/01/2021

\* SUTX2011-006 08/03/2011

**Bidding Requirements, Contract Forms and Conditions of the Contract  
PREVAILING WAGE RATES AND PAYROLL REPORTING  
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	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures) .....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	
Work Zone Barricade Servicer.....	\$ 11.85	
PAINTER (Structures) .....	\$ 18.34	
POWER EQUIPMENT OPERATOR: Agricultural Tractor.....	\$ 12.69	
Asphalt Distributor.....	\$ 15.55	
Asphalt Paving Machine.....	\$ 14.36	
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	
Concrete Pavement Finishing Machine.....	\$ 15.48	
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	
Directional Drilling Locator.....	\$ 11.67	
Directional Drilling Operator.....	\$ 17.24	
Excavator 50,000 lbs or Less.....	\$ 12.88	
Excavator over 50,000 lbs... Foundation Drill, Truck Mounted.....	\$ 17.71	
Front End Loader, 3 CY or Less.....	\$ 16.93	
	\$ 13.04	

**Bidding Requirements, Contract Forms and Conditions of the Contract  
PREVAILING WAGE RATES AND PAYROLL REPORTING  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
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Front End Loader, Over 3 CY. \$ 13.21  
Loader/Backhoe..... \$ 14.12  
Mechanic..... \$ 17.10  
Milling Machine..... \$ 14.18  
Motor Grader, Fine Grade..... \$ 18.51  
Motor Grader, Rough..... \$ 14.63  
Pavement Marking Machine..... \$ 19.17  
Reclaimer/Pulverizer..... \$ 12.88  
Roller, Asphalt..... \$ 12.78  
Roller, Other..... \$ 10.50  
Scraper..... \$ 12.27  
Spreader Box..... \$ 14.04  
Trenching Machine, Heavy..... \$ 18.48

Servicer..... \$ 14.51

Steel Worker

Reinforcing..... \$ 14.00  
Structural..... \$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole  
Worker..... \$ 16.00

TRUCK DRIVER

Lowboy-Float..... \$ 15.66  
Off Road Hauler..... \$ 11.88  
Single Axle..... \$ 11.79  
Single or Tandem Axle Dump  
Truck..... \$ 11.68  
Tandem Axle Tractor w/Semi  
Trailer..... \$ 12.81

WELDER..... \$ 15.97

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

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

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

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

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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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
PREVAILING WAGE RATES AND PAYROLL REPORTING  
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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.

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#### WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
  - \* an existing published wage determination
  - \* a survey underlying a wage determination
  - \* a Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* a conformance (additional classification and rate) ruling

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
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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.

=====

END OF GENERAL DECISION"

**Bidding Requirements, Contract Forms and Conditions of the Contract**  
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**Exhibit 4**  
**VENDOR CERTIFICATIONS**

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

Provide responses that are clear and comprehensive.

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

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

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

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

**DEBARMENT/SUSPENSION INFORMATION:**

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

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

**SURETY INFORMATION**

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

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

**BANKRUPTCY INFORMATION**

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

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

2. Provide a list of officers of the firm who, while in the employ of the firm or the employee of previous

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firms, were associated with contracts which result in lawsuits, contracts defaulted or filed for bankruptcy.  
(Please attach if applicable.)

**LITIGATION DISCLOSURE**

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

1. Has your company ever failed to complete, defaulted, or been terminated on a project?  Yes  No  
If yes, attach the project name and location, owner and architect names, and explanation of the occurrence.
2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?
  - A) Non-compliance by your company with any obligations under any current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the owner; or  Yes  No
  - B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or  Yes  No
  - C) Non-payment to Sub-Contractors and material suppliers?  Yes  No
  - D) Have your 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

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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 stormwater infrastructure and stormwater treatment facilities 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 relevant 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: \_\_\_\_\_

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2. How much work is your firm currently contracted to provide? (Provide current total amount of work in dollars from ALL sources.) \_\_\_\_\_
3. List bank references, including name and title, address and phone of contact person.  
\_\_\_\_\_  
\_\_\_\_\_
4. Will you provide a detailed financial statement and furnish any other pertinent information that may be required by the City.  Yes  No  
If no, explain: \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATIONS:**

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

**Bidding Requirements, Contract Forms and Conditions of the Contract**  
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4. any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
5. The prices quoted in your cost estimate are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

**3. 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**

Bidding Requirements, Contract Forms and Conditions of the Contract  
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**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**

Bidding Requirements, Contract Forms and Conditions of the Contract  
**SUPPLEMENTARY CONDITIONS**  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
Exhibit 5

## **SUPPLEMENTARY 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.

### **PROJECT MANUAL, SECTION 7 – SUPPLEMENTAL CONDITIONS**

#### **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.1. The following reports of explorations and test of subsurface conditions adjacent to the site of the Work:

- a. Geotechnical Report Number ANA20-020-00 dated **May 8, 2020** prepared by **Raba-Kistner Consultants, New Braunfels, TX** entitled "**Geotechnical Engineering Study- Pavements for Elizabeth Street Realignment New Braunfels Texas.**" consisting of **41** pages.
- b. Geotechnical Report Number ANA20-020-00 dated **June 23, 2020** prepared by **Raba-Kistner Consultants, New Braunfels, TX** entitled "**Supplemental Letter- Additional Pavement Sections for Elizabeth Street Realignment New Braunfels Texas.**" consisting of **2** pages.
- c. No subsurface explorations were made directly at this site.

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

Bidding Requirements, Contract Forms and Conditions of the Contract  
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Reference Section 06.04.05.A of the General Conditions:

Insert paragraph "B"

B. All construction staking shall be provided by the Contractor. Contractor shall locate and protect control points, stakes, etc. prior to starting work and preserve all points and stakes during construction. Contractor shall reimburse Engineer for all stakes, benchmarks, control points, etc. required to be replaced for any reason during the course of construction.

**ARTICLE 07.02.01**

Section 6 - ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

Reference Section 06.10.05.A

Replace the first sentence of the section with the following:

"All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision and shall, at a minimum, direct the Engineer to the specific portion of the Project and its designated Owner or Owners (The City or NBU, or both) such that the Engineer may properly evaluate and recommend the appropriate assignment of responsibility, if any, for resolution of the Claim by its proper Owner."

**ARTICLE 07.03.01**

Section 6 – ARTICLE 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work

Reference Section 06.13.07.A "Correction Period" of the General Conditions:

Replace the words "one year" with "two years"

**ARTICLE 07.04.01**

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 07.05.01**

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

**Bidding Requirements, Contract Forms and Conditions of the Contract  
SUPPLEMENTARY CONDITIONS  
CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit  
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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 07.06.01**

**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**

Bidding Requirements, Contract Forms and Conditions of the Contract  
**SPECIAL PROVISIONS**  
**CSP 21-014 Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit**  
**Exhibit 6**

## **SPECIAL PROVISIONS**

Bidders are to refer to the Construction Drawings and Specification notes for further detailed requirements on this solicitation.

The following General Notes are added to the Project Manual:

### **SP 1.1 SPECIAL CONDITIONS**

- A. The Owner is expecting the Contractor to deliver a complete construction project (in accordance with the plans). Any bid containing exclusions that are in conflict with these specifications or are considered to be unreasonable by the Engineer will result in a disqualification of the bid.
- B. This job may require rock excavation. Any bid excluding rock excavation will be disqualified.
- C. The Contractor shall prepare a well-coordinated bid, which includes all related work between subcontractors and incorporates all coordination of work. The Contractor shall assure all subcontractors have had access to the total bid package (drawings, specs, special conditions, etc.) to assure the bid and construction is fully coordinated.
- D. The Engineer's grading plan and street profiles included in the construction documents shall represent finished grades of the proposed project. The Engineer shall provide topographic digital surfaces of both existing and proposed grades. The Contractor is ultimately responsible for verifying the existing ground using whatever field surveying methods necessary. In addition, the Contractor is solely responsible for the accuracy of the earthwork quantities (embankment, excavation, material import, and material export) in the Contractor's submitted bid that are necessary to produce the finished grades.
- E. It shall be the intent of the contractor to finish the project to the finished grades included in the construction documents based on the earthwork quantities set forth in the contractor's submitted bid, and without importing additional material and without producing stockpiles of extra material. Contractor shall not stockpile any material and without producing stockpiles of extra material. Any material handling outside of the contracted amount needed to produce the finished grades for the project (including, without limitation, material importing and material exporting) shall be deemed as non-pay items, and shall be performed by the contractor at the contractor's sole cost and expense.
- F. The project specifications and TPDES plan shall be considered part of the construction documents and Contractor shall include in their bid all compliance with these documents.
- G. Contractor shall be expected to revegetate all disturbed areas in accordance with the TPDES Plan for this project. Hydromulch should be placed in a manner consistent with manufacturer's specifications. Contractor shall irrigate all such areas until vegetation is established.
- H. Hydromulch shall be Texas Native Blend or as approved by the landscape architect or Owner and will include 2" Topsoil.

Bidding Requirements, Contract Forms and Conditions of the Contract  
**SPECIAL PROVISIONS**  
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## **1.2 SITE ARCHEOLOGY**

- A. Contractor shall coordinate earthwork activities associated with the pond outfall with the city's archeologist and comply with all requirements of the Texas Historical Commission (THC)

## **1.3 SITE COORDINATION**

- A. Contractor shall coordinate construction phasing, and associated traffic control, with the City of New Braunfels.
- B. Contractor shall coordinate construction phasing and associated traffic control with adjacent projects including but not limited 1) Completion of the Market Platz at Wurstfest, 2) The installation of an NBU wastewater line on Elizabeth near Hinman Island Dr. 3) The installation of a cell tower & equipment at the location of one light standard in the parking lot, 4) the construction of the Elizabeth Avenue realignment and parking lot reconstruction.
- C. Ingress/egress to the City of New Braunfels Parks Department and the business fronting Elizabeth Ave shall be provided uninterrupted at all times throughout construction.
- D. Contractor shall maintain access the Land Park Mini Golf Course during operating hours.
- E. No construction activities shall be allowed outside the limits of construction as indicated on the Stormwater Pollution Prevention Plan.
- F. Time is of the essence for construction of this project. Contractor to obtain field acceptances from all utility agencies and City of New Braunfels within the calendar days allowed for this project.
- G. Contractor shall protect existing trees.

**End of Section**

Bidding Requirements, Contracts Forms & Conditions of the Contract

**CONTRACT AGREEMENT**

**Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit**

**Exhibit 7**

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

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

**ARTICLE 1 - WORK**

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

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

**1.02** The Work is generally described as follows:

[Short description of project scope].

**ARTICLE 2 - THE PROJECT**

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

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

**ARTICLE 3 - ENGINEER**

**3.01** The Project has been designed by:

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

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

**ARTICLE 4 - CONTRACT TIMES**

**4.01** *Time of the Essence*

A. Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

**4.02 Days to Achieve Substantial Completion and Final Payment**

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

**4.03 Liquidated Damages**

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

**4.04 Special Damages**

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

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

**ARTICLE 5 - CONTRACT PRICE**

**5.01** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract: **[Remove sections below that are not applicable]**

A. For all Work other than Unit Price Work, a lump sum of: \$\_\_\_\_\_.

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Bidding Requirements, Contracts Forms & Conditions of the Contract

**CONTRACT AGREEMENT**

**Elizabeth Ave. Storm Water Treatment-Water Quality Retrofit**

**Exhibit 7**

<b>Unit Price Work</b>					
<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The Extended Prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer. Adjustments in the Extended Price following the Engineer's determination shall be memorialized as final adjusted Extended Prices on the approved Schedule of Values to be included with the Contractor's pay applications.

**C.** Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment)  
\$\_\_\_\_\_.

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

**ARTICLE 6 - PAYMENT PROCEDURES**

**6.01 Submittal and Processing of Payments**

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

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

**6.02 Progress Payments; Retainage**

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

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

b. 95% (percent) of cost of materials and equipment not incorporated in the Work.

**6.03 Final Payment**

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

**ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS**

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

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

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

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

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

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

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

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

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

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

**ARTICLE 8 - MISCELLANEOUS**

**8.01 Terms**

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

**8.02 Assignment of Contract**

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may

not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

**8.03 Successors and Assigns**

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

**8.04 Severability**

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

**8.05 Governing Law**

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

**8.06 Venue**

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

**8.07 Prohibition on Contracts with Companies Boycotting Israel**

A. The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. [USE IN LIEU OF THE PREVIOUS SENTENCE IF THE CONTRACTOR IS EXEMPT FROM THE ISRAEL BOYCOTT REQUIREMENT—The Contractor hereby declares that it is exempt from Chapter 2271 of the Texas Government Code, as amended.] The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

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**Exhibit 7**

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

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

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

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

**8.09 Electronic Signatures (this section is omitted)**

**8.10 Texas Public Information Act**

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

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

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

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

D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this

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Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**ARTICLE 9 - INSURANCE**

**9.01 Evidence of Contractor's Insurance**

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

**[Add Exhibit A – Insurance Rider]**

**[Add Exhibit B – Contractor's Bid Form]**

**[Add Exhibit C – Evidence of Insurance]**

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

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

OWNER:

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_

Printed Name: Robert Camareno

Title: City Manager

[CORPORATE SEAL]

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

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

CONTRACTOR:

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By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

License  
No.: \_\_\_\_\_  
(Where Applicable)

Attest: \_\_\_\_\_

Agent for service or process:

Title: \_\_\_\_\_

Address for giving notices:

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

**END OF DOCUMENT**