

# CITY OF NEW BRAUNFELS



## REQUEST FOR PROPOSAL

### **Consultant for Strategic Plan Development Solicitation # RFP 23-001**

Date Issued: October 27, 2022

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

New Braunfels Purchasing Department: Phone: 830-221-4089  
Email: [bcoleman@newbraunfels.gov](mailto:bcoleman@newbraunfels.gov)



## SOLICITATION AND OFFER

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

**Solicitation Number: 23-001**

Request for Qualifications(RFQ)  
 Request for Proposal (RFP)

Date Issued: October 27, 2022

**Consultant for Strategic Plan Development**

### SOLICITATION

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

Questions concerning RFP must be received, by email only, prior to **5:00P.M. CT on November 17, 2022**.

Proposals will be received at the Office of the City Secretary at the address shown above until: **3:00 P.M. (CT), December 1, 2023**.

**There will not be a public opening.** 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, or Fax offers accepted)	Barbara Coleman Purchasing Manager	Email: bcoleman@newbraunfels.gov  Phone: (830) 221-4389
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5% Response Bond Required: 100% Payment Bond Required: 100% Performance Bond Required:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	(If YES, See information in Section 5) (If YES, See information in Section 5) (If YES, See information in Section 5)
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### OFFER

(This portion must be fully completed by Respondent.) Respondent will comply with the General Terms and Conditions required by the City of New Braunfels.

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

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

SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT. SIGNATURE SHOULD ALSO BE REFLECTED ON USB COPY.

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

Date:

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

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## SECTION 3 INSTRUCTIONS FOR RESPONSE

### 3.1 AVAILABLE DOCUMENTS

Solicitation documents may be obtained from:

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

Questions relating to definitions, interpretations, and/or requests for clarification must be in writing and directed to: [bcoleman@newbraunfels.gov](mailto:bcoleman@newbraunfels.gov).

### 3.2 SUBMISSION OF SOQs

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

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

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

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

The outside of the Response envelope or package must state:

**"RFP 223-001 – Consultant for Strategic Plan Development  
Response Due Date: December 1, 2022, 3:00 P.M. CT"**

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

(c) Responses may not be withdrawn after the time set for the closing, unless approved by the City.

### 3.3 PROPOSED SOLICITATION SCHEDULE

DATE	MILESTONE
October 27, 2022	RFP issued on <a href="https://www.bidnetdirect.com/texas/city-of-new-braunfels">https://www.bidnetdirect.com/texas/city-of-new-braunfels</a> and <a href="https://www.nbtexas.org/2694/Active-Solicitations">https://www.nbtexas.org/2694/Active-Solicitations</a>
November 17, 2022	Deadline to receive questions shall be 5:00 P.M.
December 1, 2022	Response submission deadline – 3:00 P.M.
December 2022	Potential Interviews
January 2023	Anticipated Contract

### 3.4 RESPONSE CONTENT

Respondents shall limit Responses to 30 pages exclusive of tabs and forms. Each Response, completed and signed by person(s) authorized to bind individual or legal entity, shall include the following in one envelope/package:

- **TAB 1: Solicitation and Offer Form:** Respondent must complete, and sign form located on Page 2.
- **TAB 2: Acknowledgement of Addenda, if applicable**
- **TAB 3: Documents:**
  - a. **ATTACHMENT B – COMPANY INFORMATION**
  - b. **ATTACHMENT C – PROPOSER CERTIFICATIONS**
  - c. **Conflict of Interest Questionnaire** (per Section 6.11) Must be filed 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).
  - d. **Certificate of Interested Parties - Form 1295** (Refer to Section 6.12) This form will be requested from the awarded Contractor(s).
- **TAB 4: Qualifications and previous Related Experience**
- **TAB 5: Demonstrated Understanding:**
- **TAB 6: Work Samples**
- **TAB 7: Proposed Approach and Timeline**
- **TAB 8: ATTACHMENT A – COST PROPOSAL FORM**
- **TAB 9: References**
- **TAB 10: ATTACHMENT D – DEVIATIONS FROM REQUEST FOR PROPOSAL:**  
Exceptions and Alternatives Form. Respondent is to indicate any deviations being offered in lieu of specified language referenced in the solicitation.

### 3.5 CONTACT FOR QUESTIONS

**All questions concerning this solicitation shall be in writing to: Barbara Coleman, Purchasing Manager, via email [bcoleman@newbraunfels.gov](mailto:bcoleman@newbraunfels.gov).**

All prospective Respondents are hereby instructed to not contact any member of the City of New Braunfels' City Council, City Manager, evaluation committee, or City of New Braunfels' staff members other than the noted contact person. Any such contact may be cause for rejection of your Response.

### **3.6 RESPONSES TO QUESTIONS/INQUIRIES**

Responses to questions/inquiries that directly affect an interpretation or change to this RFP will be issued in writing by Purchasing as an addendum and posted at <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and the City's website.

All such addenda issued by the Purchasing Representative before the time that Responses are received shall be considered part of the RFP. Only those inquiries the Purchasing Office replies to by addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. Respondents shall be responsible for monitoring the City's website or BidNet for any updates pertaining to the solicitation described herein. Various updates may include addenda, cancelations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

### **3.7 EXCEPTIONS AND DEVIATIONS**

Any exceptions to the terms and conditions, specifications, or objectives of the solicitation must be clearly stated in Proposer's Proposal.

### **3.8 COMPETITIVE PROPOSALS**

Proposals will not be opened publicly to avoid disclosure of contents to competing Proposers and kept confidential during the process of negotiation. However, all Proposals will be open for public inspection after award except for trade secrets and confidential information contained in the Proposals and identified as such by the Proposer. Marking the entire Proposal as confidential and/or proprietary is not in conformance with the Texas Open Records Act.

### **3.9 TERMS AND CONDITIONS**

Terms and Conditions that apply to this solicitation can be found at

<https://www.nbtexas.org/DocumentCenter/View/23388/CONB-Purchasing-Standard-Terms-and-Conditions>

## **SECTION 4 SCOPE OF WORK**

The City of New Braunfels is accepting Requests for Proposals from strategic planning consultants experienced with local government or municipal organizations to create a strategic plan in an effort a comprehensive, data-driven, and community-engaged planning process. The strategic plan will outline the direction and vision for the City for the next five years and beyond. The completed strategic plan should provide a framework for the City Council and organization's leadership team(s) in establishing and executing future policy and financial decisions that are aligned with its mission, vision, and values.

### **4. CITY BACKGROUND**

New Braunfels is strategically located in the Central Texas region, part of the Texas Triangle mega region, and is a city of regional significance, with a growing number of residents and jobs, a tourist destination and an exceptional quality of life. Centered between Austin and San Antonio, each year more than three million visitors come to explore the shopping and recreational activities steeped in German and Hispanic culture and heritage.

New Braunfels is Consistently ranked by the U.S. Census Bureau in the top 10 fastest growing cities in the Nation. This represents a compounded annual growth rate (CAGR) of 5.01% since the 2010 census. This growth rate of 5.01% means that, on average, approximately 3,738 people have located to the city every year since 2010. With a projection of 5,616 people added annually through 2027 provides an estimated city population between 122,000 to 133,000.

An examination of trends around its population growth suggests the city's attractiveness as a place to relocate has accelerated in recent decades. Since 2010, New Braunfels' rate of population growth (71%) has more than tripled that of the San Antonio MSA (21%) and nearly doubled that of the Austin MSA (37%). New Braunfels has a 2021 estimated population of over 99,000 within a metropolitan statistical area (MSA) of approximately 2.3 million inhabitants.

Founded in 1845, New Braunfels has a rich history and, in light of the tremendous growth, still retains its cultural heritage which influences its architecture, community activities, branding, pride of citizenship, and way of life.

The City of New Braunfels is a full-service City. As can be expected, growth has had a major impact on meeting demands for service and will continue to do so; however, the strategic plan should take into consideration future challenges and opportunities as development and land use patterns evolve. The City also has several unique assets which present both service level challenges and opportunities such as a vibrant downtown, two rivers that are major recreational draws, several regional parks that have high regional and statewide visitor levels as well as an aging infrastructure network that has investment needs beyond existing capacity. The strategic plan should consider all of these factors in the development of goals, priorities, tasks, etc.

Given the difficulty that public sector agencies have had recruiting and retaining talent, the strategic

plan should also identify challenges and opportunities to the City of New Braunfels in becoming a regional employer of choice. The strategic plan should also operationalize how technology and other investments can improve efficiency and productivity within City services.

While the City has not formally updated the strategic plan in some time, the City has completed the National Citizen Survey on a bi-annual basis. The results from those surveys have helped to guide policy. In addition, the City has completed a comprehensive plan and most departments have current master plan that identify capital and operational goals. The strategic plan should consider all of these documents to ensure continuity of previous planning efforts.

#### **4.1 GENERAL SCOPE**

The City of New Braunfels seeks to develop a Strategic Plan, utilizing a process that comprehensively and equitably evaluates the organization, and the community it serves, and develops a vision for the future. The resulting strategic plan should be completed by xxx 2023.

The consultant/firm will:

- A. Prepare a detailed plan that provides a comprehensive methodology to accomplish a strategic planning process. The resulting plan must include activities, timelines and resources required to result in a strategic plan that identifies, categorizes, and compiles issues into City business service areas.
  1. The methodology must provide a process to identify external stakeholders and internal City stakeholders, the process to obtain input from these stakeholders, and a process to incorporate this input into the strategic planning effort.
  2. The methodology must also include a process to provide feedback, to measure progress in achieving the goals and to periodically update the plan.
- B. The consultant will assist the city with the facilitation process of developing a strategic plan that includes stakeholder sessions and provide services that result in a City-wide Strategic Plan. These services must include:
  1. Review & discussion of the City of New Braunfels' current Mission, Vision, Values, Strategic Plan & Strategic Priorities.
  2. Input & discussion from the City of New Braunfels' Executive Leadership Team on the current Mission, Vision, Values, Strategic Plan & Strategic Priorities.
  3. Meet with internal & external stakeholders to receive input, specifically to the City of New Braunfels' Strategic Plan & Strategic Priorities.
  4. Make suggestions to City leadership based on feedback received for any updates and/or changes to the current Mission, Vision, Values, Strategic Plan & Strategic Priorities.
  5. Work with City Leadership to finalize and present proposed changes to the City Council.
  6. Defining and establishing measurable goals, objectives and performance measures.
  7. Developing strategies, action plans and tactics to accomplish the goals and objectives

8. Analysis of strengths, weaknesses, opportunities, and threats (SWOT).
9. Providing feedback mechanisms
10. Developing a systematic approach to future review and adjustments to the Plan.
11. Submit recommendations for appropriate implementation measures Presenting or assisting with presentation of the draft strategic plan to the governing council. The consultant will present recommendations on major proposal alternatives as the basis of a formal strategic plan to the City Council for adoption. The presentation should include how proposed strategies best resolve strategic issues and allow the City Council to meet goals and preserve values.

C. Overview of Project – Consultant/firm will have access to the current Vision, Mission Statements, plan, strategic priorities for development of a long-range plan.

#### **4.3 DELIVERABLE**

- A. Outcome of this process will be a written and presented report summarizing key needs, functions, partnerships, funding and other opportunities, and recommendations for the city's activities for a long-range plan. (5-10 years).
- B. The plan document should include:
  - An executive summary
  - A comprehensive, detailed plan that identifies:
  - Shared vision
  - Goals
  - Objectives
  - Strategies
  - Responsible parties and roles
  - Measures
  - Outcomes
- C. Developing recommendations regarding the implementation of the plan. Included within this phase should be recommendations regarding:
  - A detailed budget to implement the plan
  - Infrastructure (e.g., backbone organization, staffing, etc.) needed to support the plan's implementation
  - Data tracking

#### **4.4 BUDGET**

A budget is not stated for this project. We encourage you to offer your best strategic planning services proposal with the costs anticipated for the project. The City reserves the right to negotiate with the proposer to obtain the best overall project.

#### **4.5 MINIMUM QUALIFICATIONS**

- Consultant should have demonstrated experience with strategic and/or organizational facilitations, consensus building, development of strategic plans and/or long-range operational and management planning.
- Experience conducting needs assessments and SWOT analyses and translating them into recommendations for action.
- Proficiency in identifying service stakeholders and conducting a thorough environmental assessment of current situations, analyzing the situation and building consensus toward recommendations aimed at responding to the environment.
- Extensive knowledge to the concepts and practices of strategic planning including the development of vision, mission goals, objectives, action plans and performance criteria for an organization. Demonstrated ability to tailor a planning process to enhance the effectiveness of the services provided.
- Documented successes with strategic planning programs in which the Proposer actually facilitated, coordinated and/or developed a strategic plan including references who can attest to the performance of the Proposer.
- Familiarity with the governmental responsibilities and organization of the City of New Braunfels and understanding the fiscal responsibility of the City Council is beneficial.
- Capability of conducting a thorough planning process within defined budgetary constraints.
- The Proposer's skills must include the ability to inform a group of the advantages of strategic planning and guide the group through a process that is used to design a dynamic approach and promote creative thinking.

**SECTION 5**  
**EVALUATION OF RESPONSES**

**5. SELECTION PROCESS**

It is the intent of the city to make a single award from this solicitation, based on evaluation criteria listed in this solicitation and Respondent's submitted Response.

The City's evaluation team will rank Respondents meeting the evaluation criteria and the requirements of the needed services outlined in the solicitation.

The Respondent selected for award will be awarded a contract to provide services as specified.

**5.1. EVALUATION CRITERIA**

The City of New Braunfels will review all Responses submitted in response to this solicitation using the criteria presented below and rank each Respondent. A Respondent will be recommended for award to City Council based upon the published selected criteria noted below. The evaluation committee recommendations are subject to approval by the City of New Braunfels City Council.

**Program Criteria:** The Responses will be ranked based on the following evaluation criteria:

<u>Criteria</u>	<u>Points</u>
Qualifications and previous related experience of key personnel to be assigned to this project.	30 Pts
<ul style="list-style-type: none"><li>○ Name the principal staff person(s) who will be primarily responsible for providing services for this contract and their resume and qualifications</li><li>○ Previous related work experience within the past four years, which includes previous experience conducting similar services.<ul style="list-style-type: none"><li>▪ Explanation of the respondent's experience in providing the requested services. Include the client, type of work, project start and completion dates, project name, and project size.</li></ul></li></ul>	
Demonstrate understanding of the City of New Braunfels with demonstrated knowledge of the New Braunfels.	10 Pts
Work Samples - <ul style="list-style-type: none"><li>○ Two (2) professional writing samples illustrating capacity to produce high-quality, public-facing documents</li></ul>	10 Pts
Project management approach and timeline - <ul style="list-style-type: none"><li>○ Detail the applicant's proposed strategy and approach, and a proposed timeline of work.</li></ul>	20 Pts
Proposed fees – Description of the respondent's proposed fees, costs and charges,	30 Pts

- Provide an explanation by milestone of what services will be provided including estimated hours and costs. Attach a detailed explanation of how the cost was calculated for the proposed milestones and hourly rates.
- If variations are proposed, list variations in an attachment.
- Provide a total not to exceed cost. The all-inclusive cost shall include labor, materials, equipment, for each phase. This will be all-inclusive, including time for meetings, conference calls, etc.
- Budget inclusive of all costs including staff, sub-contracts, consultants, travel, administrative supplies, and community facilitation supplies. Explain how often the City will be invoiced for services.
- Explain what costs would be charged to the City and the respondent's policy for billing fees and any costs relating to supplies or other participation stipends, food for meetings, translation services, etc.

References - Acceptable/Unacceptable

- Two (2) professional references with phone and email listed that can speak to the applicant's abilities to successfully perform this work.

<b>TOTAL</b>	<b>100 pts</b>
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The City reserves the right to request additional information or clarifications from all Respondents and to allow corrections of errors or omissions.

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

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

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

**5.5 LIMITATIONS**

- **Right to Accept or Reject.** The City reserves the right to reject any or all submittals, to waive informalities and accept the submittal that the Owner believes is the most advantageous to the public interest and in keeping with the local government project procedures. The RFP does not commit the City to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFP.
- **Solicitation Response to Remain Subject to Acceptance.** All responses will remain subject to acceptance for one hundred twenty (120) days after opening without acting.
- **City Council Approval Required.** The City of New Braunfels City Council may approve the Respondent selected to provide the services requested in this RFP. The City reserves the right to authorize contract negotiations to begin without further discussion with Respondents submitting a Response. Therefore, each Response should be submitted as completely and accurately as possible. The City reserves the right to request additional data, oral discussions, or presentations in support of the written Response.
- **Respondent's Obligation Regarding Evaluation:**
  - Submission of Information. Submitters are cautioned that it is each Respondents sole responsibility to submit information related to the evaluation categories, and the City is under no obligation to solicit such information if it is not included with the Response. Failure of a Respondent to submit such information may cause an adverse impact on the evaluation of the specific Response.
  - Respondent Review of RFP. Respondents are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFP and their Responses. Failure to do so will be at the Respondents' risk and will not be a determinative factor when awarding the contract for services.
- **Oral Non-Binding.** Any non-written representations, explanations, or instructions given by City staff or City agents are not binding and do not form a part of, or alter in any way, the RFP, a written Contract pertinent to the RFP, or the awarding of the contract.
- **Lobbying Prohibited.** Proponents are prohibited from directly or indirectly communicating with City Council members regarding the Proponent's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFP. Proponents are prohibited from contacting city staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the proponent from the selection process.

## 5.7 SUBCONTRACTING PROPOSAL

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

## 5.8 RESPONSE SPECIFICATIONS

- **Modification or Withdrawal of Response.** Responses cannot be altered or amended after the submittal deadline. Responses may be modified prior to the deadline only by providing a written notice by mail or email) to the Purchasing Representative at the address shown herein. A submitter's Response may also be withdrawn in writing by providing the same notice by a submitter or the submitter's authorized agent, providing the agents identify is made known and the agent signs the request to withdraw Response. **HOWEVER, IN THE EVENT OF WITHDRAWAL, THE SUBMITTER WILL NOT BE ALLOWED TO RESUBMIT.** This provision does not change the common law right of a Respondent to withdraw a Response due to a material mistake in the Response.
- **Inquiries.** To ensure fair and objective evaluation, all questions related to this RFP should be addressed only to the persons named in Section 3.5 of this solicitation.
- **RFP Interpretation; Addendum.** Any interpretations, corrections, or changes to this RFP will be made by addenda through:
  - <https://www.bidnetdirect.com/texas/city-of-new-braunfels>
  - and the City Website: <http://nbtexas.org/DocumentCenter/Home/Index/139>

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

## **SECTION 6 AWARD OF CONTRACT**

**6.1. SUCCESSFUL RESPONDENT'S DOCUMENTS:** The successful Respondent will provide its Response and any negotiated amendments to the Response to the Office of the Purchasing Manager as an electronic Word or PDF file.

**6.2. CONTRACT AWARD:** The selection of a Respondent and the execution of a contract, while anticipated, are not guaranteed by the City. The City reserves the right to determine which Response is in the City's best interest and to award the contract on that basis, to reject any and all Responses, waive any irregularities of any Response, negotiate with any potential Respondent (after Responses are opened) if such is deemed in the best interest of the City.

**6.3. CITY COUNCIL APPROVAL:** The City Council will consider the final contract for approval unless the award amount is less than \$50,000.00. In the event the total amount of the contract is less than \$50,000.00, the contract will be awarded administratively.

**6.4. FINAL CONTRACT:**

- A. The selected Respondent will assume responsibility for all services offered in its Response, whether such services are provided by a subcontractor or joint venture arrangement. The successful Respondent will be considered the sole point of contact about contractual matters, including payment of all charges resulting from the contract.
- B. The successful Respondent will be required to enter a written contract with the City. The City's legal terms and conditions for this contract are included herein.
- C. This RFP and the successful Respondent's Response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful Respondent.
- D. Be advised that exceptions to any portion of the RFP may jeopardize acceptance of your Response. If exceptions are taken to the City's Contract, this will be clearly indicated, and a full explanation given for each exception. It is required that the Response enumerate the specific clauses that the Respondent wishes to amend or delete and suggest alternative wording in the Response. In view of the length of time involved in obtaining the approval of legal counsel, Respondents are cautioned not to state that the Respondent's Response is subject to the Respondent's standard terms and conditions or that the final terms and conditions are subject to negotiation after award. This may result in the Response being deemed non-responsive, in which no further consideration or evaluation will be made.

**6.5. INSURANCE AND LIABILITY:**

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

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

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

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

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

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

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

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

## **6.6 INDEPENDENT CONTRACTOR**

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

state and local laws, rules and regulations affecting the performance of all obligations taken herein.

#### **6.07 INDEMNIFICATION**

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

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

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

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

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

## **6.08 SAFEGUARDING OF INFORMATION AND DATA**

The Contractor will safeguard all information and data provided by the City. Further, Contractor will 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 Finance Department, Purchasing division, with appropriate remuneration to the City

## **6.09 MISCELLANEOUS**

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

## **6.10 NON-NEGOTIABLE TERMS**

The following terms or conditions are not negotiable:

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

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

#### **6.11 CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)**

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

**Form CIQ** is available from the Texas Ethics Commission by accessing the following web address: [https://www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm)

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

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

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

#### **6.12 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)**

A proponent that will be awarded a contract that is greater than \$25,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission (“TEC”) website:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

**ATTACHMENT A  
PROPOSAL FORM**

**Failure to complete this form may result in your Proposal being deemed non-responsive and rejected without any further evaluation.**

**OFFER TO: CITY OF NEW BRAUNFELS:**

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Proposal.

**ADDENDA:**

The undersigned hereby acknowledges receipt of the following addenda to the Drawings and Specifications, all of the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

**OBLIGATION:**

The undersigned, by submission of this Offer, hereby agrees to be obligated, if the Offer is accepted by the City of New Braunfels, to enter a Contract to provide the stated goods and/or services for the term as stated herein in accordance with the Scope of Work, Specifications, and Terms and Conditions, together with any written Addenda as specified above and any negotiated terms. If this offer is accepted and signed by the City of New Braunfels, this RFP document, together with any written Addenda and any negotiated terms shall be (collectively) the contract.

**NON-COLLUSION:**

The undersigned, by submission of this Proposal Form and other required forms, hereby declares that this Proposal is made without collusion with any other business making any other Proposal, or which otherwise would make a Proposal.

**SUBMITTAL REQUIREMENTS:**

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFP.

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

## COST PROPOSAL FORM

- Provide an explanation by milestone of what services will be provided including estimated hours and costs. Attach a detailed explanation of how the cost was calculated for the proposed milestones and hourly rates.
- If variations are proposed, list variations in an attachment.
- Provide a total not to exceed cost. The all-inclusive cost shall include labor, materials, equipment, for each phase. This will be all-inclusive, including time for meetings, conference calls, etc.

	Estimated Hours	Proposed Costs
<b>Total (not to exceed):</b>	<b>Hours: _____</b>	<b>\$ _____</b>

- **Direct Costs** – Are direct costs e.g., travel, printing, postage, etc. specifically attributed to the project and not included in the billing rates identified and attached to the proposal?

Yes  No

**No proposal may be accepted which has not been signed in the appropriate space below:**

I certify, under penalty of perjury, that I have the legal authorization to bind the Consultant/firm hereunder:

\_\_\_\_\_  
Company Name \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign \_\_\_\_\_ Title \_\_\_\_\_

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

## ATTACHMENT B COMPANY INFORMATION

**1. Company Information:**

- Company name: \_\_\_\_\_
- Company address: \_\_\_\_\_
- Year established: \_\_\_\_\_
- Number of years in business under present name: \_\_\_\_\_
- Form of ownership:  Proprietorship  Partnership  Corporation  Other (specify) \_\_\_\_\_
- When organized: \_\_\_\_\_
- If a corporation, where incorporated: \_\_\_\_\_
- Federal Employer Identification Number: \_\_\_\_\_
- Texas Comptroller's Taxpayer Number, if applicable: \_\_\_\_\_
- DUNS NUMBER: \_\_\_\_\_
- Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

- \_\_\_\_\_
- \_\_\_\_\_

- Complete **A** below if you are a non-resident Respondent (your company's principal place of business is not in Texas). **Resident Respondents must check box B.**

**A:** Company is a non-resident Respondent. Its principal place of business is the state of \_\_\_\_\_

Check one of the following options:

Non-resident Respondents in the state of our principal place of business are required to propose \_\_\_\_\_ percent lower than resident Respondents by state law. A copy of the statute is attached.

Non-resident Respondents in the state of our principal place of business are not required to underbid resident Respondents in order to secure contract awards.

**B:** Company's principal place of business or corporate offices is in the State of Texas.

**2. Subcontractor(s), if applicable:**

- Subcontractor(s) will not be used to complete this contract.
- Subcontractor(s) will be used to complete this contract. (*Attach a list if additional space is necessary.*)

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

Percentage (%) of Total Contract: \_\_\_\_\_

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

3. If applicable, provide a list of officers of the company who, while in the employ of the company or the employ of previous companies, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

## **ATTACHMENT C VENDOR CERTIFICATIONS**

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

**To demonstrate qualification to perform the scope of services, answer all questions listed below. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets, if applicable.**

### **DEBARMENT/SUSPENSION INFORMATION:**

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity or is Respondent listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>?

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, or listed at epls.gov and state the reason for or circumstances surrounding the debarment, suspension, or ineligible for federal procurement, including but not limited to the period of time for such debarment, suspension or ineligibility.

### **CERTIFICATIONS:**

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

A. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution.

B. "Fraudulent practice" means an intentional misrepresentation of facts made

1. to influence the solicitation process or the execution of the Contract to the detriment of Owner,
2. to establish Cost Response or Contract prices at artificial non-competitive levels, or
3. to deprive Owner of the benefits of free and open competition.

C. "Collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owner, a purpose of which is to establish Cost Responses at artificial, non-competitive levels; and

D. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

### **2. NON-COLLUSION CERTIFICATION:**

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

1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation.
2. That your cost Response is genuine and is not a collusive or sham cost Response;
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 Response, 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 Response or in any other cost Response, or to secure through any collusion, conspiracy, or Contract any advantage against the City of New Braunfels or any other

respondent; and

4. The prices quoted in your cost Response are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful Contract on the part of your company or anyone acting on its behalf.

**3. GOVERNMENT CODE TITLE 10 SUBTITLE F VERIFICATIONS:**

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

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

B. Pursuant to Sections 2270.001, 2270.002, 808.001, Texas Government Code:

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

C. Pursuant to subtitle F, Chapter 2252, Texas Government code, contractor shall not do business with Iran, Sudan or a foreign terrorist organization while providing products or services to the City of New Braunfels.  Yes  No

**ACKNOWLEDGEMENT**

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

---

Company's Name

---

Signature, Authorized Representative of Respondent

---

Title

**ATTACHMENT D**  
**EXCEPTIONS AND ALTERNATIVES FORM**

**Failure to complete this form may result in your Response being deemed non-responsive and rejected without any further evaluation.**

Respondents are to comply with all requirements of this solicitation, otherwise the Response may be deemed non-responsive. Exceptions may be considered if they are presented with the Response and if the City determines that the exception does not materially alter the intent of this solicitation or that it exceeds the requirements of this solicitation.

No Exceptions Taken  
 Exceptions Taken – \*See attached (Include in Tab 10)

*\*Note that if any exceptions are taken, all required information must be submitted as an attachment*

---

In the event the Respondent takes exception to any language in this solicitation, they may set forth alternatives by presenting each exception separately by stating:

- a)** The specific item or clause for which an exception is requested (citing the page and item number).
- b)** The suggested change to the exception, inclusive of proposed new language if applicable.
- c)** An explanation as to how the proposed change would benefit the City and/or why the exception is necessary.

*Except as may be indicated above, Respondent is in complete Contract with this entire solicitation including any proposed terms, conditions and business arrangements described herein.*

---

(Authorized Signature)

Date

---

(Title)

**ATTACHMENT E**

**SAMPLE - PROFESSIONAL SERVICES AGREEMENT  
CONSULTANT FOR STRATEGIC PLAN DEVELOPMENT**

THIS AGREEMENT is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as CITY and \_\_\_\_\_, hereinafter referred to as “CONSULTANT”.

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

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

NOW, THEREFORE, all parties agree as follows:

**I. GENERAL**

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

**II. SERVICES**

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

**Consultant to provide consultative services for the selection and implementation of a new Enterprise Resource Planning (ERP) software**

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

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

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

### **III. PAYMENT**

The parties agree that CONSULTANT shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "B". The contract amount specified shall not exceed \$\_\_\_\_\_. The contract amount specified in Exhibit "B" shall not be exceeded without written permission of the CITY.

### **IV. TIME FOR PERFORMANCE**

A. CONSULTANT agrees to commence work immediately upon execution of this Agreement and to proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT, to completion as described in the Completion Schedule, attached hereto as Exhibit "C" and hereby made a part of this Agreement.

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

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

### **V. DOCUMENTS**

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

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

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

D. All text documents supplied to CITY as provided herein shall be in Word 2018 or fully compatible with Word 2017. Unless otherwise requested all design drawings supplied to CITY as provided herein shall be in Adobe PDF and AutoCAD compatible DWG format, if applicable.

## **VI. TERMINATION**

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

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

## **VII. INSURANCE**

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

B. CONSULTANT shall provide and maintain in full force and effect during the time of this Agreement, auto insurance (including, but not limited to, insurance covering the operation of owned and non-owned automobiles, trucks and other vehicles) protecting CONSULTANT and CITY as an additional Insured with limits not less than \$1,000,000 for Bodily Injury/Property Damage (Combined Single Limit, Each Incident) and \$5,000 for Personal Injury Protection (PIP).

C. CONSULTANT shall provide Commercial General Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The general Liability Insurance must name the CITY as an additional Insured.

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

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

### **VIII. INDEMNIFICATION FOR INJURY AND PERFORMANCE**

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

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

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

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

### **IX. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

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

### **X. INDEMNIFICATION FOR PERFORMANCE**

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

## **XI. ASSIGNMENT**

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

## **XII. APPLICABLE LAWS**

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

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

## **XIII. DEFAULT OF CONSULTANT**

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

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

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

## **XIV. ADJUSTMENTS IN SERVICES**

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

## **XV. EXECUTION BECOMES EFFECTIVE**

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

## **XVI. AGREEMENT AMENDMENTS**

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified,

amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

**XVII. GENDER AND NUMBER**

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

**XVIII. COMPLETE CONTRACT**

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

**XIX. NOTICES AND AUTHORITY**

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

(Signatures on Following Page)

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

**OWNER**  
THE CITY OF NEW BRAUNFELS

BY: \_\_\_\_\_  
Robert Camareno

TITLE: CITY MANAGER

ADDRESS:  
550 Landa Street  
New Braunfels, TX 78130

**FIRM'S COMPANY NAME**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS:  
\_\_\_\_\_

**SAMPLE**