

CITY OF NEW BRAUNFELS

SERVICE AGREEMENT

THE STATE OF TEXAS §
§ COMAL COUNTY §

This Service Agreement (“Agreement”) is made and entered by and between the City of New Braunfels, Texas, (the “City”) a Texas municipality, and _____ (“Contractor”).

Section 1. Duration

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through September 30, _____ with the option to renew for _____ additional terms of _____ year each unless terminated as provided for in this Agreement.

Section 2. Scope of Work

- (A) The contractor shall provide all equipment, materials, and personnel necessary to complete the “Project” as more particularly described in the Scope of Work attached hereto as Exhibit “A”.
- (B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.
- (C) The Contractor shall perform all work for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation

The Contractor shall be paid in full upon completion of the project or in the manner set forth in the Price and Delivery Schedule attached hereto as Exhibit “B”.

- (A) *Billing Period.* Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (B) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the Price and Delivery Schedule (Exhibit B) and accounted for in the total contract amount.

- (C) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor. All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (a) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
 - (b) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.
- (D) *Revision to Rates for Labor.* The initial contracted rate sheet will be in place for one (1) year from the date of award. After the first year, labor rates may be revised annually. Any such revision must be agreed upon by both parties, will take effect on the renewal date of the Agreement, and will remain firm and fixed for the remainder of the Agreement (unless subsequently revised). The maximum revision shall be based on the year over year changed in the Bureau of Labor Statistics Series ID#, insert series ID here, herein "BLS Index," in comparing the month of January; provided however, that in no case shall a revision to labor rates exceed 3% for any given year. The Baseline BLS Index shall be the month of January 2022. In the event that the BLS Index is discontinued or the titles, codes or methodology revised, a new index shall be promptly identified and incorporated into the agreement upon mutual agreement between CITY and CONTRACTOR. Such revised rates as computed herein shall be incorporated into the Agreement by Amendment
- (a.) To the extent there is a conflict of this Section and any other language or covenants in this Agreement, this Section 3 shall control.

Section 4. Time of Completion

The prompt completion of the Project is critical to the City. Unnecessary delays shall be grounds for dismissal of the Contractor and termination of this Agreement without any further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination.

- (A) *Substantial Completion.* The Project is expected to be substantially completed in

accordance with the project schedule and the "Substantial Completion" date outlined in the Price and Delivery Schedule "Exhibit B" or within _____ calendar days, whichever comes first.

- (B) *Liquidated Damages.* Contractor and Owner recognize that time is of the essence as stated above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in the Scope of Work, plus any extensions thereof allowed in accordance with the Contract. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Contractor further acknowledges and agrees that, if the Contractor fails to substantially, or cause the Substantial Completion of any portion of the Work within the Contract time, the Owner will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Contractor agree that, if the Contractor shall neglect, fail, or refuse to achieve substantial completion of the Work by the Substantial Completion date, subject to proper extension granted by the Owner, then the Contractor agrees to pay the Owner the sum of **Six hundred dollars (\$600.00) per day** for each day in which such Work is not completed, not as penalty, but as liquidated damages, for the damages ("Liquidated Damages") that would be suffered by Owner as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Work as required herein. The Liquidated Damages shall be in lieu of any and all other damages which may be incurred by Owner as a result of the failure of Contractor to complete within the Contract Time.

Section 5. Insurance

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit C.

- (A) *Worker's Compensation.* CONTRACTOR shall provide and maintain Workers Compensation with statutory limits.
- (B) *Automobile Insurance.* CONTRACTOR shall provide and maintain in full force and effect for the duration 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 CONTRACTOR 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) *General Liability Insurance.* CONTRACTOR shall provide general Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The general Liability Insurance must name the CITY as an additional Insured.

Section 6. Miscellaneous Provisions

- (A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.
- (B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.
- (C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.
- (D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.
- (E) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or

actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(F) *Conflict of Terms.* All component parts of the Agreement Documents are intended to be complementary. In order of precedence, the Agreement Documents consist of the following documents ("Agreement Documents"):

- a) All written Change Orders executed after the Effective Date of this Agreement by the CITY Purchasing Agent and Consultant;
- b) This Agreement, along with any Exhibits, as they may later be modified by Amendments;
- c) The Statement of Work executed under this Agreement by the CITY Purchasing Agent and Consultant.
- d) City of New Braunfels Standard Terms and Conditions (found at <https://www.nbtexas.org/531/Purchasing>)
- e) The solicitation
- f) Contractor's proposal

(G) *Other Agreements between parties:*

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

(H) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"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.

- (I) *Non-Boycott of Energy.* Pursuant to Texas Senate Bill 13 (2021), Contractor certifies that either (i) it does not boycott Israel and will not boycott energy companies; and (2) will not boycott energy companies during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.
- (J) *Non-Boycott of Firearm Entity.* Pursuant to Texas Senate Bill 19 (2021), Contractor certifies that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association .
- (K) *Access to Premises.* Authorized representatives of the Contractor will be allowed access to the facilities on City premises at reasonable times to perform the obligations of the Contractor regarding such facilities. Contractor shall adhere to all City rules, regulations, and guidelines while on City property. It is expressly understood that the City may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

Section 7. Termination

This Agreement may be terminated:

- (A) By the mutual agreement and consent of both Contractor and City;
- (B) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (C) By the City, In the event CONTRACTOR fails to comply or becomes unable to comply with the provisions of this Agreement, and the failure or inability to comply is not remedied within ten (10) days of City's sending of written notice of such failure to comply, the CITY may, at its sole discretion and without prejudice to any other right or remedy:
 - a.) Terminate this Agreement and be relieved of the payment of any further consideration to CONTRACTOR except for work determined by CITY to be satisfactorily completed prior to the termination of this Agreement. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of CONTRACTOR to and from meetings called by CITY at which CONTRACTOR is required to attend, but shall not include any loss of profit. In the event of such termination, CITY may proceed to complete the services under this Agreement ("services") in any manner deemed proper by CITY. The CONTRACTOR shall be liable for all costs in excess of the total contract price under this Agreement that are incurred to complete the services

and may be deducted from monies to be paid to CONTRACTOR for services satisfactorily completed.

- 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 CONTRACTOR.
- (D) By the City, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

Section 8. Indemnification

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF NEW BRAUNFELS, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Section 9. Notices

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 10. No Assignment

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 11. Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver

Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Governing Law; Venue

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Comal County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Comal County, Texas.

Section 14. Entire Agreement

It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 15. Right To Audit

City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 16. Dispute Resolution

In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps:

- (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute.
- (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute.
- (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then

promptly meet, in person, in an effort to resolve the dispute.

Section 17. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire

Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Certificate of Interested Parties

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the New Braunfels City Council will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for any and all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website,
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

an

d <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS C MISDEMEANOR.

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SIGNATURE PAGE

This agreement is hereby executed on this ____ Day of _____, 20__.

CITY OF NEW BRAUNFELS

CONTRACTOR:

By: _____

Name: _____

Title: City Manager

By: _____

Printed Name: _____

Title: _____

ADDRESS FOR NOTICE:

CITY:

CONTRACTOR:

City of New Braunfels

Robert Camareno, City Manager

550 Landa Street

New Braunfels, TX 78130

Em:

Em: _____

Exhibit “A”

SCOPE OF WORK

Exhibit “B”

PRICE AND DELIVERY SCHEDULE

Exhibit “C”

EVIDENCE OF INSURANCE

Exhibit “D”

CONFLICT OF INTEREST - FORM 1295 IF APPLICABLE