



**SOLICITATION  
AND OFFER**

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

**CSP 21-003 Headwaters at Comal Facilities  
Water Retrofit Project, New Braunfels, TX**

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

Date Issued: **October 14, 2020**

**SOLICITATION**

Questions may be submitted until close of day **October 22, 2020, 5:00 p.m. (CST)**  
 Proposers must submit sealed proposals in a (1) signed original, 1 copy, and one electronic format (USB).  
 Proposals will be received at the New Braunfels City all at the address shown above until: **3:00 p.m. (CST), October 30, 2020.**  
 Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:  
 (NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

Debbie Kimball,  
Purchasing Buyer

Email: dkimball@nbtexas.org  
 Phone: (830) 221-4081  
 Fax: (830) 608-2112

- |                                 |                                         |                                        |                                        |
|---------------------------------|-----------------------------------------|----------------------------------------|----------------------------------------|
| 5% Proposal Bond Required:      | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO | (If YES, See information in Section 5) |
| 100% Payment Bond Required:     | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            | (If YES, See information in Section 5) |
| 100% Performance Bond Required: | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            | (If YES, See information in Section 5) |

**OFFER** (This portion must be fully completed by Proposer.)

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

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

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

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

1) Proposer's State of Residence: \_\_\_\_\_ (See information in Section 3)

2) Prompt Payment Terms: \_\_\_\_% Discount if paid within \_\_\_\_ days.

Name and Address of Proposer:	Name and Title of Person Authorized to Sign Offer:  E-Mail Address:  Phone Number:  Fax Number:
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Signature:	Date:
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Name, Address and Telephone Number of Person authorized to conduct negotiations on behalf of Proposer.  
 (Applies to Request for Proposal only)

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**COMPETITIVE SEALED PROPOSAL**

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 Section 3 Instructions for Response  
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Exhibits:  
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 Exhibit 2 Prevailing Wage Schedule  
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Attachments: Technical Drawings  
 Construction Specifications

Section 28 Starting Systems  
 Section 29 Contract Close-out

**TECHNICAL SPECIFICATIONS**

The Construction Specifications for this Project are included in the contract documents. In the event a specification is not provided in the CONB or NBU plans and specifications, the current version of the *City of San Antonio Standard Specifications for Construction* (as amended and revised) will apply for this project where applicable.

TxDOT specifications will apply for this as they are referenced for in the construction drawings.

All water and wastewater utility work under this Project is subject to the inspection and acceptance by New Braunfels Utilities (NBU) or a duly authorized agent of NBU. Contractor is responsible for providing written notice to NBU no less than 48 hours in advance of commencing work under this Project. All work shall conform to the current New Braunfels Utilities Water Systems Connection /Construction Policy.

**PROJECT MANUAL**

Section 6 General Conditions  
 Section 7 Supplementary Conditions  
 Section 8 Special Provisions  
 Section 9 Definitions and Terminology  
 Section 10 Contractor’s Use of Premises  
 Section 11 Measurements and Payment Procedure  
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 Section 25 Trees and Plant Protection  
 Section 26 Product Options and Substitutions  
 Section 27 Project Record Documents

**STANDARD DETAILS & TECHNICAL SPECIFICATIONS:**

The Standard Details for this Project are included in the construction drawings. In the event a standard detail is not shown, the current version of the *City of San Antonio Standard Details for Construction*, TxDOT Standard Details, and NBU Standard Detail Drawings for Construction (as amended and revised) will apply for this project where applicable.

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

Proposals are due **November 5, 2020 at 3:00 P.M. (CST)** at the City of New Braunfels - City Secretary's Office, ATTN: Purchasing, 550 Landa Street, New Braunfels, Texas 78130 and proposals will be publicly opened and read aloud directly after bids are due via zoom webinar at the link below: Zoom link to join the webinar:

<https://us02web.zoom.us/j/85100049870>. Telephone Only: (833) 926-2300, Webinar ID: 851 0004 9870.

Solicitation documents may be obtained from:

- Purchasing Staff at the New Braunfels City Hall
- The BidNet Direct website, <http://www.bidnetdirect.com/texas>
- The City of New Braunfels' website, <http://www.nbtexas.org/1175/Bid-Opportunities>

**03.02 SUBMISSION OF PROPOSAL**

Companies responding to the CSP must follow the instructions below.

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

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that proposals be submitted in a sealed envelope with **1 original master (marked original), 1 copy, and one (1) electronic copy on USB. Responses shall be tabbed and labeled as indicated for consistency.**

1. **TAB 1** – Solicitation and Offer Form; completed and signed
2. **TAB 1** – Acknowledgment of Addenda, if applicable
3. **TAB 2** – Cover Letter: Name and address of the Proposer, as well as a brief description of the firm and its history.
4. **TAB 3** – Executive Summary: A brief summary highlighting the most important points of the proposal.
5. **TAB 4** – Cost Proposal Form (Exhibit 1)
6. **TAB 5** – Qualifications of Proposer (Exhibit 3)
7. **TAB 6** – Plan & Schedule as required in Exhibit 3-Qualifications of Proposer, Sec. 5
8. **TAB 7** – Acceptable Documentation
  - One copy of Certificate of Insurance completed and signed, Section 4, Article 15
  - Conflict of Interest, Section 4, Article 16.11
  - Certificate of Interested Parties (Form 1295), Section 4, Article 16.10
9. **TAB 8** – Required information indicated in Drawings, if applicable
10. **Required after contract award** – Performance & Payment Bonds Section 4, Articles 12 and 13.

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

**Delivery**

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

CSP 21-003  
Headwaters at the Comal Facilities Water  
Quality Retrofit Project  
Due: November 5, 2020 at 3:00 p.m.

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

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

Proposals will be publicly opened and read aloud directly after bids are due. An abstract of the amounts of the base Proposals and alternatives will be made available to Proposers after the awarding of Proposals.

**03.04 AUTHORIZED CONTACT PERSONS**

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

PROJECT MANAGER:	Mark Enders	830-221-4369
CONTRACT PROCUREMENT REP.:	Debbie Kimball	830-221-4081

**END OF SECTION**

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

**04.01.01** The City is seeking a contractor to construct a bioretention stormwater treatment basin within the NBU Well Yard located at the Headwaters at the Comal facility in New Braunfels, Texas. The project is being funded through the Edwards Aquifer Habitat Conservation Plan (EAHCP) program. The Headwaters at the Comal Facilities Water Quality Retrofit Project is a joint project, between the City of New Braunfels and New Braunfels Utilities. *This contract shall have dual ownership.* The joint project will allow the City of New Braunfels to cooperatively purchase construction services in the best interest of both parties, will benefit from coordinating their respective parts of the Project in order to expedite project construction and realize cost savings and improvements in efficiency and quality of facilities.

The intent of the project is to treat and infiltrate stormwater runoff from the well yard area prior to discharging to Landa Lake and the Comal River. Project plans entitled “City of New Braunfels-Headwaters at the Comal Facility, Water Quality Retrofit” have been developed by Doucet and Associates and are attached to this solicitation.

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

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

**ARTICLE 2 – WORK**

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

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

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

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

Engineers Project Estimation is: **\$66,000**

**Statement of Work:**

Refer to specification plans provided a part of this bid which outlines details of the project's general notes, demolition, erosion & sedimentation plan, water quality pond plan, water quality pond cross sections, water quality calculations, grading & drainage plan and landscaping plan.

The below list is intended to enhance the Statement of Work and is not intended to limit the respondent's description of the project's process or services provided.

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

This project shall require expertise in the following construction areas:

- Demolition Services
- Erosion & sedimentation
- Water quality ponds
- Asphalt Work
- Grading & Drainage planning
- Drainage reconstruction
- Excavation of the bioretention basin
- Installation of underdrain system and outfall
- Installation of biofiltration media layers
- Landscape planting/revegetation

**ARTICLE 3 – DESIGN ENGINEER**

**04.03.01** Doucet & Associates is the Design Engineer for the Project.

**ARTICLE 4 – CONTRACT TIMES****04.04.01 Time of the Essence**

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

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

A. The Work will be substantially completed within 45 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 60 calendar days after the date when the Contract Times commence to run.

The substantial completion schedule will be further defined with the final contract.

**04.04.03 Liquidated Damages**

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500 for each calendar day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each calendar day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE****04.05.01 Contract Price**

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 04.05.01.A below:

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

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

Contractor shall submit Applications for Payment in accordance with the General Conditions and Exhibit 4 Supplemental Conditions.

**04.06.02 Progress Payments; Retainage**

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

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made

and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

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

**04.06.03 Final Payment**

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

**ARTICLE 7 – CONTRACTOR’S REPRESENTATIONS****04.07.01 Contractor’s Representations**

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

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



- H. Contractor has given the Purchasing Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City of New Braunfels is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 8 – CONTRACT DOCUMENTS****04.08.01 Contents**

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

The order of precedence in case of conflicts or discrepancies between various parts of the Contract Documents subject to the ruling of the Engineer shall generally, but not necessarily, follow the guidelines listed below:

- A. Plans
- B. Supplementary Conditions
- C. General Contract Document

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

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

- A.** The City of New Braunfels (CONB) and New Braunfels Utility (NBU) will evaluate proposals according to the process and criteria listed below. The City of New Braunfels and NBU reserves the right to consider other pertinent factors in addition to the proposal in making its final decision. Each of the criteria has been assigned an appropriate weight by the CONB and NBU. Following an analysis and valuation of the Proposals, ranking of the Proponents will be made based upon the evaluation criteria. In the event of a tie in the rankings, CONB and NBU will break the tie based upon their determination of which Proposal will provide the best value to the CONB and NBU. Subjective judgment on the part of the CONB and NBU is implicit in the criteria evaluation process. After opening and ranking, award may be made on the basis of the original proposal as is, without discussion, clarification or modification, or the CONB and NBU may discuss with the selected Proponent, offers for cost adjustment and other elements of the Proposal.
- B.** Any Proposal may be considered unacceptable if the City of New Braunfels determines it fails to provide adequate technical and price information as specified in this Instruction to Proponents.
- C. Evaluation Criteria:** The proposals submitted in response to this CSP will be reviewed by a committee assembled by the City of New Braunfels and New Braunfels Utilities. This committee will evaluate the proposals based on but not limited to the following criteria:
- 1. Cost Proposal Form – (65 Points)**
    - a) The Owner will consider the total contract cost as part of its evaluation. It is the intent to consider the total cost of both projects in the aggregate as part of its evaluation; however, the Owner has the right to award by project if it is in the best interest of the City. The Owner will have the right to accept alternates, if applicable, in any order or combination unless otherwise specifically provided in the Proposal Documents. The Owner will have the right to accept alternative cost proposal relating to alternate project schedules per Item 3 below.
  - 2. Relevant Experience and Other Considerations – (15 Points)**

**See Exhibit 3: Qualifications of Proposer**

    - a) Experience as a general contractor with specific experience in the construction of stormwater infrastructure and stormwater treatment facilities of the same or similar type, size, nature and class as the project being proposed.
      - Minimum experience is indicated in Exhibit 3. Consideration will be given to the number of years of the Proponent has been in business.
    - b) If you are using a sub for this work provide the sub-contractors specific experience in the construction of stormwater infrastructure and stormwater treatment facilities of the same or similar type, size, nature and class as the project being proposed.
    - c) Consideration will be given to projects which are:

- occupied or substantially **complete**, as a prime Contractor or sub-contractor within the last five years;
  - at a cost in excess of \$50,000 that your company is **presently** constructing as a Prime Contractor or sub-contractor;
  - the Prime Contractor or sub-contractor on projects with the CONB and NBU as the Owner.
- d) Other Considerations – such as historical information and facts as per Section 4.9.1.E. “Other Considerations” and qualifications from Exhibit 3.
- 3. Plan and Schedule – (20 Points)**  
Represent a potential plan and schedule for performing the work for each project.
- a) Baseline Schedule – Provide a proposed baseline schedule in Microsoft Projects for this Work defining critical path.
- b) Schedule Strategies – If applicable, provide strategies which are included in the proposal to minimize delays and areas for possible time savings.
- 4. Financial Capacity to perform the work – (pass/fail)**
- a) Provide evidence of financial capability and stability which must be appropriate to the size and scope of this project.
- b) List bank references, including contact name and title, address and phone of contact person.
- c) This is a Pass or Fail. Any Proposer receiving a score of “Fail” will be automatically disqualified.**

**Total Points Possible: 100 Points**

- D. Presentations/Interviews:** After an initial review and compilation process, the City may ask for a presentation/interview of services from selected companies or individual to clarify and to develop a comprehensive assessment of the submissions.
- E. Other Considerations:** The City reserves the right to consider historical information and facts, whether gained from the proposal, references, or any other source, in the evaluation process, including submitter’s past working or business relationship with the City, if any. The City further reserves the right to consider a submitter’s background, personnel, experience, financial and other references, management practices, exceptions to the CSP or subsequent contract, and any working relationships, past or present, a submitter may have with its other clients.

**F. Proposed Project Schedule**

DATE	MILESTONE
October 13, 2020	CSP issued on <a href="http://www.bidnetdirect.com/texas">http://www.bidnetdirect.com/texas</a> and <a href="http://www.nbtexas.org/">www.nbtexas.org/</a>
October 22, 2020	Deadline for questions and requests for clarification
November 5, 2020	Competitive Sealed Proposal (CSP) submission deadline Time, address and Zoom link are provided in Section 3, Item 03.01.
November/December 2020	Anticipated approval, and award of Contract, by City Council

**ARTICLE 10 – GENERAL CONTRACTOR REGISTRATION**

**04.10.01** Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained at [www.nbtexas.org](http://www.nbtexas.org) click on-line services, Download Center, Building then GC Reg. Application or call the Building Division at 830-221-4060.

**ARTICLE 11 – CONTRACT SECURITY**

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

**ARTICLE 12 – PERFORMANCE AND PAYMENT BONDS**

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

**ARTICLE 13 – MINIMUM WAGES AND PREVAILING WAGE RATES**

**04.13.01** Minimum wage rates have been established and are specified in Section 5, Article 23 & 24 Wage Rates. See Exhibit 2 - Prevailing Wage Schedule

**ARTICLE 14 – INSURANCE AND LIABILITY COVERAGE**

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

- A. Name City of New Braunfels and New Braunfels Utility as additional insured/or an insured, as its interests may appear.
- B. Provide City of New Braunfels and New Braunfels Utility a waiver of subrogation.

- C. Provide City of New Braunfels and New Braunfels Utility with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- D. Provide the City Purchasing Representative at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.
- E. Submit a certificate of insurance reflecting coverage as follows:
- a. Automobile Liability:

Bodily Injury (Each person)	-	\$1,000,000.00
Bodily Injury (Each accident)	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
  - b. General Liability (Including Contractual Liability):

Bodily Injury	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
Aggregate	-	\$2,000,000.00
  - c. Excess Liability:

Umbrella Form	-	\$5,000,000.00
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  - d. Worker's Compensation: - Statutory  
Or Employer's Liability Insurance:

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

## ARTICLE 15 – MISCELLANEOUS

### 04.15.01 Terms

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

### 04.15.02 Assignment of Contract

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 04.15.03 Successors and Assigns

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

### 04.15.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid

and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**04.15.05 Contractor's Certifications**

Contractor certifies in Exhibit 3, it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 04.16.05:

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

**04.15.06 Certification of House Bill 89**

Contractor certifies in Exhibit 3, it has not boycotted Israel currently and will not boycott Israel during the term of the contract, Pursuant to Section 2270.0001, Texas Government Code.

**04.15.07 Indemnity Against Loss**

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, hold harmless and defend City of New Braunfels, their officers, agents and employees from any loss, damage, liability or expense, including reasonable attorney's fees, on account of damage to property and injuries, including death, to all persons, including employees of the contractor or any of its consultants, which may arise from any negligent act, error or omission, on the part of the contractor, its employees, agents, and consultants, pursuant to this contract.
- B. The City does not assume any liability to third persons, nor will the City reimburse the Contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder, and Contractor further agrees to provide the defense for, and indemnify and hold harmless City from any and all claims, suits, causes of action, and liability, arising in connection with this contract.

**04.15.08 Anti-Lobbying and Procurement**

Lobbying activities or representations by the Proposer are prohibited between the date that the solicitation is issued and the date of contract execution.

During a no-contact period, a proposer shall make a representation only through the authorized contact person.

During the no-contact period, a proposer may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a proposer.

The prohibition of a representation during the no-contact period applies to a representation initiated by a proposer, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

**04.15.09 Safeguarding of Information and Data**

The Contractor shall safeguard all information and data provided by the City. Further, Contractor shall not sell or make available data or mailing lists compiled from data received from the City without the express written approval of the City Council, through the City Purchasing Representative, with appropriate remuneration to the City.

**04.15.10 Certificate of Interested Parties (Form 1295)**

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

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

**Standard Filing Process:** Form 1295 is accessible at, and must be completed online, at the following web address: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

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

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

#### 04.15.11 Requirement for Disclosure of Conflict of Interest

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

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

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

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

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

By law, Form CIQ must be filed with the City Secretary no later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**END OF SECTION**



**TERMS AND CONDITIONS****ARTICLE 1 – DEFINED TERMS**

**05.01.01** Terms used in these Terms and Conditions, which are defined in the General Conditions of the Contract Documents, have the meanings assigned to them in the General Conditions. The term “Proposer” means one who submits a Proposal directly to Owner, as distinct from a sub-Proposer, who submits a proposal to a Proposer. The term “Successful Proposer” means the lowest, qualified, responsible and responsive Proposer to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award. The term “Proposal Documents” includes the Advertisement or Invitation to Proposal, General Terms and Conditions, the Proposal Form, and the Contract Documents (Including all Addenda issued prior to receipt of Proposals).

**ARTICLE 2 – COPIES OF PROPOSAL DOCUMENTS**

**05.02.01** Complete sets of the Proposal Documents in the number and for the sum stated in the Advertisement or Competitive Sealed Proposal may be obtained from Owner. The sum for the Project Documents is not refundable.

**05.02.02** Complete sets of Proposal Documents must be used in preparing Proposals; neither Owner nor Design Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

**05.02.03** Owner, in making copies of Proposal Documents available on the above terms, do so only for the purpose of obtaining Proposals on the Work and do not confer a license or grant for any other use.

**05.02.04** Complete sets of Proposal Documents may be downloaded at <http://www.bidnetdirect.com/texas> and the City website, <http://www.nbtexas.org>, unless otherwise notified.

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

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

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

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

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

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

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

**05.04.01** All questions about the meaning or intent of the Contract Documents are to be directed to Purchasing Representative noted on Page 1 of this document. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda emailed, mailed or delivered to all parties recorded by Purchasing Representative as having received the Proposal Documents. Questions received less than ten days prior to the date for opening of proposals may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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

#### **ARTICLE 5 – PROPOSAL GUARRANTY**

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

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

#### **ARTICLE 6 – PERFORMANCE AND PAYMENT BONDS**

**05.06.01** When performance and/or payment bonds are required, each shall be issued in an amount equal to the Contract Amount as security for the faithful performance and/or payment of all Contractors' obligations under the Contract Documents. Performance and payment bonds

shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by Owner pursuant to applicable law.

**ARTICLE 7 – CONTRACT TIME**

**05.07.01** The number of days within which, or the dates by which, the Work is to be completed and ready for final payment (the Contract Time) are set forth in the Section 4 Article 4 – General Information.

**ARTICLE 8 – LIQUIDATED DAMAGES**

**05.08.01** Provisions for liquidated damages, if any, are set forth in Section 4 Article 4 - General Information.

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

**05.09.01** The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Proposal Documents, or those substitute or “or-equal” materials and equipment approved by Owner and identified by Addendum. The materials and equipment described in the Proposal Documents establish a standard of required type, function and quality to be met by any proposed substitute or “or-equal” item. No item of material or equipment will be considered by Owner as a substitute or “or-equal” unless written request for approval has been submitted by Proposer and has been received by Owner at least 15 days prior to the date for receipt of Proposals. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Proposer. Owner’s decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Proposers. Proposers shall not rely upon approvals made in any other manner.

**ARTICLE 10 – SUBCONTRACTORS, SUPPLIERS AND OTHERS**

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

**05.10.02** If apparent Successful Proposer declines to make any such substitution, Owner may award the Contract to the next lowest Proposer that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Proposal security of any Proposer. Any Subcontractor, Supplier,

individual, or entity so listed and against which Owner makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner subject to revocation of such acceptance after the Effective Date of the Agreement.

**ARTICLE 11 – PREPARATION OF PROPOSAL**

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

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

**ARTICLE 12 – SUBMISSION OF PROPOSAL**

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

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

**05.13.01** Unit Price

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

**05.13.02** Lump Sum Price

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

of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

**ARTICLE 14 – MODIFICATION AND WITHDRAWAL OF PROPOSALS**

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

**05.14.02 CHANGES**

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

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

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

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

**ARTICLE 15 – OPENING OF PROPOSALS**

**05.15.01** Proposals will be opened, and base price will be read aloud, via Zoom link provided in Section 3, Item 03.01. Other content will not be disclosed to competing Proposers and the contents will be kept confidential during negotiations. Until the negotiations are completed, only the number, identity and proposed price of the Proposers submitting Proposals will be made available to the public.

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

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

**ARTICLE 17 – AWARD OF CONTRACT**

**05.17.01** With recommendation by the evaluation committee the award of this contract will be provided by the City of New Braunfels City Council and the Board of New Braunfels Utility. The division of cost funding between CONB and NBU, as defined in the Post Award Funding Formula within the MOU, will have no bearing on the criteria and decision for award and will be post award.

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

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

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

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

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

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

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

- a) The proposal has any omission, alteration of form, addition or condition not called for, or unreasonable or unbalanced unit proposal prices.
- b) The proposal is incomplete or is not accompanied by an acceptable bid guaranty.
- c) More than one proposal is submitted by the proposer.

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

**05.17.09** Each proposer by submission of a proposal waives any claims it has or may have against the Owner, the Engineer, its sub-consultants and their employees and any other consultants, and any trustees, officers, and employees of Owner, connected with or arising out of the proposal administration, proposal evaluation, recommendation for Contract award, the award of the Contract and the rejection of any proposals.

#### **ARTICLE 18 – CONTRACT SECURITY**

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

#### **ARTICLE 19 – SALES TAX**

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

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

#### **ARTICLE 20 – LAWS AND REGULATIONS**

**05.20.01** The Proposer's attention is directed to the fact that all applicable Texas state laws, municipal ordinances and rules and regulations of all authorities having jurisdiction over the work to be performed and services to be provided will apply to the Contract through out, and they will

be deemed to be included in the Contract the same as if herein written out in full.

**ARTICLE 21 – RESIDENT PROPOSERS**

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

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

**ARTICLE 22 – GENERAL CONTRACTOR REGISTRATION**

**05.22.01** Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained at [www.nbtexas.org](http://www.nbtexas.org) click on-line services, Download Center, Building then GC Reg. Application or call the Building Division at 830-221-4060.

**ARTICLE 23 – PREVAILING WAGES**

**05.23.01** Proposer's must comply with all requirements of the prevailing wage statute, and Government Code 2258 and Related Acts for non-Federal contracts.

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

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates. <http://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>  
Exhibit 2 - Prevailing Wage Schedule

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

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

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



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

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

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

**05.24.05** According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

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

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

## **ARTICLE 25 – RELEASE OF INFORMATION**

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

## **ARTICLE 26 – DISCLOSURE OF PROPRIETARY INFORMATION**

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

Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney

General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

**05.26.02** The Contractor recognizes that this Project is publicly owned, and the Owner is subject to the disclosure requirements of the Texas Public Information Act (“TPIA”). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner’s obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner’s audit rights in section 13.7 of the General Conditions.

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

(A) provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or

(B) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

**05.26.04** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Solicitation and the contractor or vendor agrees that the Agreement can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

**END OF SECTION**

## **EXHIBITS**

**NBU Headwaters at the Comal Facilities Water Quality Retrofit**  
**COST PROPOSAL FORM**

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
100.1 (SA)	Mobilization	LS	1		
100.2 (SA)	Insurance and Bond	LS	1		
104.1 (SA)	Street Excavation - Remove Asphalt and Base	CY	50		
105.1 (SA)	Excavation	CY	110		
307.5 (SA)	Concrete Structure, Headwall for 6" PVC Pipe	EA	1		
307.5 (SA)	Concrete Panels (match existing on site)	EA	2		
500.1 (SA)	Concrete Curb Level Spreader	LF	120		
507.2 (SA)	Chain Link Wire Fence (for Tree protection, 5 ft)	LS	1		
508S (COA)	6" SCH 40 PVC Cleanout	EA	2		
510-SD-6N (COA)	Pipe, SCH 40 PVC, 6 IN, Non-Perforated, including excavation and backfill	LF	71		
510-SD-6P (COA)	Pipe, SCH 40 PVC, 6 IN, Perforated, including excavation and backfill	LF	65		
540.9 (SA)	Temporary Sediment-Control Fence or Approved Equal	LF	150		
550.1 (SA)	Trench Excavation Safety Protection	LF	71		
608S-1-ML (COA)	Mountain Laurel, 10 GAL	EA	7		
608S-1-GM (COA)	Gulf Muhly, 5 GAL	EA	29		
608S-1-TC (COA)	Turk's Cap, 1 GAL	EA	50		
609S-C (COA)	Native Seeding for Revegetation per the Plan Specific Seed Mix (Thunder Turf)	SY	320		
660S (COA)	Biofiltration Medium including Bridging Stone	CY	60		
	Gravel (1/2" to 1 1/2" washed rounded river gravel, for pond bottom layer)	CY	20		
				<b>TOTAL</b>	

**Acknowledgement of Cost Proposal**

The undersigned, in compliance with the **CSP 21-003, Headwaters at the Comal Facilities Water Quality Retrofit** and having carefully examined the Proposal Documents and the Detailed Plans and Specifications, the undersigned Bidder hereby proposes to do all the work and furnish all necessary superintendence, labor, machinery, equipment, tools and materials, and to complete all the work this refers to, for the construction of all items to complete the project for the unit prices for work in place for the items and quantities identified in the attached solicitation Schedule.

Receipt is hereby acknowledged of the following addenda to the Contract Documents:

Addendum No. 1 dated \_\_\_\_\_ Received \_\_\_\_\_

Addendum No. 2 dated \_\_\_\_\_ Received \_\_\_\_\_

Addendum No. 3 dated \_\_\_\_\_ Received \_\_\_\_\_

All the various phases of work enumerated in the detailed specifications with their individual jobs and overhead, whether specifically mentioned, included by implication or appurtenant thereto, are to be performed by the Contractor under one of the items listed in the bid schedule, irrespective of whether it is named in said list.

Bidder agrees to perform all of the work listed in the bid documents and as described in the specifications and shown on the plans, for the stated unit prices.

Contractor's Name: \_\_\_\_\_

Signed by: \_\_\_\_\_  
 (Authorized Representative)

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

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

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

**END**

Bidding Requirements, Contract Forms and Conditions of the Contract  
Prevailing Wage Rates and Payroll Reporting  
CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project  
EXHIBIT 2

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**WAGE RATE DETERMINATION**

COUNTY NAME: COMAL

Wages are based on DOL General Decision:

**TX160016- HEAVY AND HIGHWAY CONSTRUCTION**

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.  
<http://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>,

**PREVAILING WAGES**

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

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

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.  
<http://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>  
Exhibit 2A - Prevailing Wage Schedule

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

**EMPLOYMENT REQUIREMENTS AND WAGE RATES**

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

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

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

Contractor and each Subcontractor shall keep certified payrolls be collected and maintained by the Contractor for itself and all subcontractors, and made available to the Owner as may be required upon request or for audit at completion of the job.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

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

## WAGE RATE DETERMINATION

COUNTY NAME: COMAL

Wages are based on DOL General Decision:

TX TX20200007- HEAVY AND HIGHWAY CONSTRUCTION

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.
- <https://beta.sam.gov/>

## PREVAILING WAGES

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

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

- A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.  
<https://beta.sam.gov/>

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

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

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

Bidding Requirements, Contract Forms and Conditions of the Contract  
Prevailing Wage Rates and Payroll Reporting  
CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project  
**Exhibit 2**

"General Decision Number: TX20200007 01/03/2020

Superseded General Decision Number: TX20190007

State: Texas

Construction Types: Heavy and Highway

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

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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Modification Number    Publication Date  
 0                            01/03/2020

\* SUTX2011-006 08/03/2011

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



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Less.....	\$ 13.04
Front End Loader, Over 3 CY.	\$ 13.21
Loader/Backhoe.....	\$ 14.12
Mechanic.....	\$ 17.10
Milling Machine.....	\$ 14.18
Motor Grader, Fine Grade....	\$ 18.51
Motor Grader, Rough.....	\$ 14.63
Pavement Marking Machine....	\$ 19.17
Reclaimer/Pulverizer.....	\$ 12.88
Roller, Asphalt.....	\$ 12.78
Roller, Other.....	\$ 10.50
Scraper.....	\$ 12.27
Spreader Box.....	\$ 14.04
Trenching Machine, Heavy....	\$ 18.48
Servicer.....	\$ 14.51
Steel Worker	
Reinforcing.....	\$ 14.00
Structural.....	\$ 19.29
TRAFFIC SIGNAL INSTALLER	
Traffic Signal/Light Pole	
Worker.....	\$ 16.00
TRUCK DRIVER	
Lowboy-Float.....	\$ 15.66
Off Road Hauler.....	\$ 11.88
Single Axle.....	\$ 11.79
Single or Tandem Axle Dump	
Truck.....	\$ 11.68
Tandem Axle Tractor w/Semi	
Trailer.....	\$ 12.81
WELDER.....	\$ 15.97

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other

Bidding Requirements, Contract Forms and Conditions of the Contract  
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health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and

Bidding Requirements, Contract Forms and Conditions of the Contract  
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non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

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

With regard to any other matter not yet ripe for the formal

Bidding Requirements, Contract Forms and Conditions of the Contract  
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process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final."

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END OF GENERAL DECISION

**Qualifications of Proposers**  
**CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project**  
**Exhibit 3**

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## QUALIFICATIONS OF PROPOSERS

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

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

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

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

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

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

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

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

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

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

3. When organized: \_\_\_\_\_

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

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

6. Give former names of the company, with dates of operation under each name.

Former Name	Date

**Qualifications of Proposers**  
**CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project**  
**Exhibit 3**

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7. General Character of work performed by your company: \_\_\_\_\_

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8. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes                       No

9. Is Respondent authorized and/or licensed to do business in Texas?

Yes             No            If yes, list authorizations/licenses.

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**DEBARMENT/SUSPENSION INFORMATION:**

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

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

**SURETY INFORMATION:**

1. Has the Respondent ever had a bond or surety canceled or forfeited? (Provide in this format)

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

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**BANKRUPTCY INFORMATION:**

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

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

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

**Qualifications of Proposers**  
**CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project**  
**Exhibit 3**

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

**LITIGATION DISCLOSURE:**

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

1. Has your company ever failed to complete, defaulted, or been terminated on a project?  
 Yes  No

If yes, attached the project name and location, owner and architect names, and explanation of the occurrence.

2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?
- A) Non-compliance by your company with any obligations under any current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the owner; or  Yes  No
  - B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or  Yes  No
  - C) Non-payment to Sub-Contractors and material suppliers?  Yes  No
  - D) Have you or any member of your Firm or Team paid liquidated damages in the last three (3) year?  Yes  No

If you answered yes to any of the above questions, provide in an attachment the project name and location, owner and architect names, and explanation of the nature, status and/or outcome of such claim or litigation.

3. Has your company or any of your Sub-Contractors' companies ever failed to take corrective action on items of work under warranty during the warranty period?  Yes  No
4. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?  Yes  No

**EXPERIENCE & QUALIFICATIONS:**

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

**Qualifications of Proposers**  
**CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project**  
**Exhibit 3**

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1. How many years has your current organization been doing business as a construction general contractor? \_\_\_\_\_ years.  
 If less than five (5) years please explain in an attachment your organization's construction general contractor history.
2. How many years have you been doing construction-contracting work under previous business name(s)?

Give former names of the company, with dates of operation under each name.

Former Name	Date/Duration

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

Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the General and Supplemental Conditions of this Contract.  Yes  No

Your company certifies that it is not in arrears in the payment of any obligations to the City, including, without limitation, property or sales taxes, fees or utility charges.  Yes  No

If no to any of the above attach an explanation:

4. Bids shall be considered from responsible respondents with experience in general road construction, underground utilities and reconstruction/rehab of existing roads of the same or similar type, size, nature and class as the project being proposed. The Respondent's experience, in combination with its subcontractor's experience, should include a *minimum* of five (5) projects within the last ten (10) years.
  - 4.1 Contractor should include Project Summaries that demonstrate knowledge of sequencing, staging and construction challenges in limited areas and schedules for work due to renovation construction environments. Project Summary should describe specific experience with using construction specifications.
  - 4.2 Each Project summary should include: Project name, project scope, location, duration (start and end dates), reference (owner name with a phone number and e-mail address, original and final contract amount, date of final completion and names of project manager, superintendent, estimator



**Qualifications of Proposers**  
**CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project**  
**Exhibit 3**

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and project engineer.

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

List **ALL** projects of similar character that your company has completed as a prime Contractor or sub Contractor within the last ten (10) years. You may attach your own list if it contains all of this information.

List **ALL** experience you have had as the prime Contractor or sub Contractor on projects with the City of New Braunfels and/or New Braunfels Utilities as the Owner. Give project name and architect name and phone numbers, project status, and whether the project is on schedule.

List **ALL** projects that your company is **presently** constructing as a prime Contractor or sub Contractor. Give project name and location, owner and Architect names and phone numbers, project status, and whether the project is on schedule.

5. List the name, position, residence address, background and experience of each principal member of your firm, including the officers. (Provide in this format)

Name	Position	Residence Address	Background/Experience
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**PROJECT SCHEDULE**

Provide an estimated project schedule based on the construction specifications. This item is part of the evaluation criteria with a value of 10 points.

**FINANCIAL**

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

If no, explain: \_\_\_\_\_

\_\_\_\_\_

## CONTRACTOR'S CERTIFICATIONS

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract, as defined in Paragraph 04.09.05:  Yes  No
  - A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - B. "fraudulent practice" means an intentional misrepresentation of facts made
    1. to influence the bidding process or the execution of the Contract to the detriment of Owner,
    2. to establish Bid or Contract prices at artificial non-competitive levels, or
    3. to deprive Owner of the benefits of free and open competition;
  - C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
2. NON-COLLUSION CERTIFICATION:
  - A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's bid?  Yes  No
    1. That you are fully informed of the contents of the bid and the circumstances of its preparation;
    2. That your bid is genuine and is not a collusive or sham bid;
    3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other bidder, firm or person to submit a collusive or sham bid, or to refrain from bidding, or sought by communication or conference with any other bidder, firm or person to fix the prices, overhead, profit, or any cost element in your bid or in any other bid, or to secure through any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other bidder; and
    4. The prices quoted in your bid are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.
3. HOUSE BILL 89 VERIFICATION
  - A. Contractor shall verify that it's named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270:  Yes  No
    1. Does not boycott Israel currently; and
    2. Will not boycott Israel during the term of the contract the

Pursuant to Section 2270.001, Texas Government Code:

  1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise

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taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

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

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

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

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

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

1. If the Bidder's response to the following questions reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Bidder for serious violations of Occupational Safety & Health Administration (OSHA) regulations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
2. If the Bidder's response to the following questions reveals more than one (1) case in which Bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
3. If the Bidder's response to the following questions reveals that the Bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death, at its discretion, the City will determine whether to disqualify the Bidder.
4. The City may consider the responses to each question listed below separately when making a discretionary determination of whether to disqualify a Bidder and it may consider the cumulative impact of the information generated by the Bidder's responses in making the determination.

**Qualifications of Proposers**  
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5. In order to consider the safety records of potential contractors prior to awarding bids on City contracts, the City requires that Bidders answer the following questions and submit them upon request:

QUESTION ONE

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

QUESTION TWO

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

QUESTION THREE

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

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

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

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

1. Does the Bidder have a written construction safety program?  Yes  No
2. Does the Bidder conduct regular construction site safety inspections?  Yes  No
3. Does the Bidder have an active construction safety training program?  Yes  No
4. Does the company have a lost time injury rate and a total recordable injury rate of less than or equal to the national average for North American Industrial Classification System (NAICS) Category 23 for each of the past five (5) years? (Attach the Bidder's OSHA 300 and 300A logs for the past five (5) years)  Yes  No
5. Does the Bidder have an experience modifier rate of 1.0 or less? (Attach the Bidder's NCCI workers compensation experience rating sheets for the past five (5) years)  Yes  No
6. Has the Bidder had any OSHA inspections within the past six (6) Months?  Yes  No  
(If "YES", provide sufficient documentation to indicate the nature of the inspection, the findings, and magnitude of the issues.)

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**See next page for Acknowledgement**

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS  
COUNTY OF COMAL

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

*Bidder's full name and entity status:*

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**Company's Name**

**Signature, Authorized Representative of Bidder**

**Title**

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## **SUPPLEMENTARY PROVISIONS**

These Supplementary Provisions are changes to, or additions to, the requirements of the Project Manual (Sections 7-29) of the Contract and are a part of the Contract Documents.

The following General Notes are added to the Project Manual:

Refer to drawings and construction notes made a part of this solicitation.

**1.1 MANUFACTURER'S CERTIFICATES.** All manufacturers' certificates required herein are to be furnished by the Contractor at his own expense.

**1.2 BOUNDARIES OF WORK.** The Owner will provide land and rights-of-way for the work specified in this contract and make suitable provisions for ingress and egress. The Contractor shall not enter on or occupy with men, tools, equipment, or materials, any ground outside the property of the Owner without the written permission of the Owner of such ground. Other contractors and employees or agents of the Owner may, for all necessary purposes, enter upon the work and premises used by the Contractor, and the Contractor shall conduct his work so as not to impede unnecessarily any work being done by others on or adjacent to the site.

**1.3 HAULING OF MATERIALS.** Any vehicle, truck, truck-tractor, trailer or semi-trailer or combination of such vehicles, when used to deliver materials to a project, shall comply with the State laws concerning the gross weight of such vehicle or combinations of vehicles and load and the allowable axle weights, unless authorized by permit to exceed the legal weight.

**1.4 EXAMINATION OF THE PROJECT SITE.** Prospective bidders shall make a careful examination of the site of the project, soil and water conditions to be encountered, improvements to be protected, disposal sites for surplus material not designated to be salvage materials, and as to methods of providing ingress and egress to private properties.

**1.5 QUANTITIES.** The quantities of each item on the bid proposal blank represent the approximate amount of work to be done. Final quantities completed will be determined and paid for by actual measurements on the ground of the final work completed. No incidental items or work will be paid for unless there appears an item in the proposal for such work. **It must be strictly understood that the prices bid are for complete and acceptable work.**

**1.6 MATERIALS.** The Contractor shall furnish all materials for a complete job as shown on the plans and as required by the specifications.

**1.7 EXISTING STRUCTURES.** The plans show the locations of all known surface and subsurface structures. However, the Engineer assumes no responsibility for failure to show any or all the structures on the plans or to show them in their exact locations. It is mutually agreed that such failure to show these structures will not be considered as a sufficient basis for claims for additional compensation for extra work, or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades, or requires the building of special work, provisions for which are not made in the plans and proposal, in which case the provisions in these specifications for extra work shall apply.

**1.8 TERMINATION OF CONTRACT IN CASE OF NATIONAL EMERGENCY.** Whenever, because of a national emergency so declared by the President of the United States or other lawful authority, it becomes impossible for the Contractor to obtain all of the necessary labor, material and equipment for the prosecution of the work with reasonable continuity for a period of two months, the Contractor shall, within seven days, notify the Owner in writing, giving a detailed statement of the efforts which have been made and listing all necessary items of labor, material and equipment not obtainable. If after investigation, the Owner finds that such conditions exist and that the inability of the Contractor to proceed is not attributable in whole or in part to the fault or neglect of the Contractor, then if the Owner cannot, after reasonable effort, assist the Contractor in procuring and making available the necessary labor, materials, and equipment within thirty days, the Contractor may request the Owner to terminate the contract and the Owner shall within thirty days comply with the request, and the termination shall be based on a final settlement, which shall include, but not necessarily be limited to , the payment for all work executed.

**1.9 COPIES OF PLANS AND SPECIFICATIONS.** Two (2) sets of the Plans and Specifications shall be furnished to the Contractor, without charge, for construction purposes. Additional copies may be obtained from the Engineer at actual reproduction cost.

**1.10 REFERENCE SPECIFICATIONS.** Where reference is made in these specifications to specifications compiled by other agencies, organizations, or departments, such reference is made for expediency and standardization from the material suppliers' point of view, and such specifications referred to are hereby made a part of these specifications.

Whenever reference is made to the furnishing of materials or testing thereof to conform to the Standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification, or tentative specification adopted and published at the time of advertisement for bids, even though reference has been made to an earlier standard, and such standards are made a part hereof to the extent which is indicated or intended.

The following are names and abbreviations of such groups:

AASHO	American Association of State Highway Officials
ACI	American Concrete Institute
AGMA	American Gear Manufacturers Association
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
API	American Petroleum Institute
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASCE	American Society of Civil Engineers
ASA	American Standards Association
ASHE	American Society of Heating & Ventilating Engineers
ASTM	American Society for Testing Materials
ASME	American Society of Mechanical Engineers
AWSC	American Welding Society Code
AWPA	American Wood Preservers Association
AWWA	American Water Works Association
FED.SPEC.	Federal Specification
NAVY SPEC.	Navy Department Specification
NEC	National Electric Code
NEMA	National Electrical Manufacturer's Association

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

Supplementary Provisions

CSP 21-003 Headwaters at the Comal Facilities Water Quality Retrofit Project

Exhibit 4

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SAE	Society of Automotive Engineers Standards
SHBI	Steel Heating Boiler Institute
U.L., INC.	Underwriters' Laboratories, Incorporated

Where no reference is made to a code, standard, or specification, the Standard Specifications of the ASTM, the ASA, the ASME, the AIEE, or the NEMA shall govern.

**1.11 ABBREVIATIONS.** Wherever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal, or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as follows:

Asph.	Asphalt
Ave.	Avenue
Blvd.	Boulevard
D.I.	Ductile Iron
C.L.	Centerline
C.O.	Cleanout
Conc.	Concrete
Cond.	Conduit
Corr.	Corrugated
Cu.	Cubic
Culv.	Culvert
Dia.	Diameter
Dr.	Drive or Driveway
Elev.	Elevation
F.	Fahrenheit
Ft.	Foot or feet
Gal.	Gallon
Lb.	Pound
Lin.	Linear
M.H.	Manhole
Max.	Maximum
Min.	Minimum
Mono.	Monolithic
No.	Number
%	Percent
P.S.I.	Pounds per square inch
P.V.C.	Polyvinyl Chloride
Reinf.	Reinforced
Rem.	Remove
Rep.	Replace
R/W or R of W	Right-of-Way
Sani.	Sanitary
Sq.	Square
Std.	Standard
St.	Street or Storm
Str.	Strength
Vol.	Volume



Yd.

Yard

In reference to such abbreviations where a specification number is referred to, the latest revision of said specification shall apply.

**1.12 INCIDENTAL ITEMS.** Bidders are especially notified that no incidental items of work will be paid for unless there appears an item in the proposal for such work.

**1.13 USE OF EXPLOSIVES.** Use of explosives will not be allowed at the project site.

**1.14 MANUFACTURED PRODUCTS.** All equipment of standard manufacture specified herein shall be the manufacturer's latest and proven design. Specifications and drawings call attention to certain features but do not purport to cover all details entering into the design of the products or systems. The completed product or system shall be compatible with the functions required and the equipment furnished by the Contractor.

**1.15 SITE ADMINISTRATION.** The Contractor shall be responsible for all areas of the site used by it, and by all Subcontractors in the performance of the Work. The Contractor will exert full control over the actions of all employees and other persons with respect to the use and preservation of property and existing facilities, except such controls as may be specifically reserved to the Owner or others. The Contractor has the right to exclude from the site all persons who have no purpose related to the Work or its inspection and may require all persons on the site (except Owner's employees) to observe the same regulations as the Contractor requires of its employees.

**1.16 LINES AND GRADES.** Horizontal control and established benchmarks are provided within the Construction Plans.

The Contractor will be responsible for all field surveying and construction staking. The Contractor shall provide construction staking at such intervals as necessary to control the grade and alignment of the work. Any work performed without being properly located both horizontally and vertically may be ordered removed and replaced at the Contractor's expense.

The cost of replacing any benchmark stakes, pins, nails, spikes, or iron pipes which were disturbed by the Contractor shall be charged against the Contractor and deducted from the payment for the work.

**1.17 PUBLIC UTILITIES AND OTHER PROPERTY.** In case it is necessary to change or move the property of the Owner or of a public utility, such property shall not be moved or interfered with by the Contractor until authorized by the utility company, Owner, or Engineer.

It will be the Contractor's responsibility to contact the proper authority and set up a field meeting to verify by uncovering of the utility and determine the location and elevation of each major utility described above, at least two weeks prior to crossing the utility. If field conditions vary from those shown on the contract plans, the Contractor shall notify the Engineer immediately of field conditions to be encountered, so enough time exists to make any necessary adjustments in line or grade. **Failure by the Contractor to make proper and timely verification of the above described utilities shall be justification for rejection of any claims for extra cost by the Contractor.**

If, after field verification, it is necessary to change or move the property of a property owner or of a public utility, Ten (10) days' notice shall be given before such change, and such property shall not be

moved or interfered with until authorized by the property owner or the utility company. The right is reserved to the property owner or public utilities to enter upon the limits of the project for the purpose of making such changes or repairs of their property that may be made necessary by the performance of this contract.

**1.18 FENCES, IMPROVEMENTS, AND DRAINAGE CHANNELS.** Fences or other improvements removed to permit construction shall be replaced in the same location and left in a condition as good as, or better than, that in which they were found. There shall be no separate pay item for fences removed or damaged beyond the limits shown in the plans.

Temporary fencing for maintenance of site security shall be provided by the Contractor at his expense. Temporary fencing, with gates, to restrain livestock shall be provided through areas where livestock are pastured, unless the Contractor makes satisfactory arrangements with the landowner and/or tenant. The temporary fence shall be installed on the easement lines and shall be removed after the trench has been backfilled.

Where surface drainage channels or drainage structures are disturbed or altered during construction, they shall be restored to their original condition of grade and cross section as soon as possible.

Temporary channels required to provide adequate drainage during construction shall be provided and maintained by the Contractor. No separate payment will be allowed for this work.

**1.19 SUPERINTENDENCE BY CONTRACTOR.** The Contractor shall always have on the project, as his agent, a competent Superintendent capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed. The Superintendent must be capable reading, speaking and comprehending English. The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of work subcontracted.

The Contractor shall always be responsible for supervision of all work performed by the Subcontractor during construction.

**1.20 HANDLING MATERIALS NOT APPROVED.** The Contractor shall remove from the site any materials found to be damaged, and any materials not meeting the specifications. These materials shall be removed promptly, unless the Engineer and Owner will accept the materials after repairing. Materials found to be damaged, or not acceptable to the Engineer or Owner after installation, shall be removed or replaced as directed. Inspection before installation shall not relieve the Contractor from any responsibility to furnish materials meeting the specifications.

**1.21 DUST CONTROL.** Contractor shall take responsible measures to prevent unnecessary dust in the project area. Earth surfaces subject to dusting shall be kept moist with water or by application of a chemical dust suppressant. Dusty materials in piles or in transit shall be covered when practical to prevent becoming airborne.

Buildings or operating facilities which may be affected adversely by dust shall be adequately protected from dust. Existing or new machinery, motors, instrument panels or similar equipment, shall be protected by suitable dust screens. Proper ventilation shall be included with dust screens.

**1.22 ACCOMODATION OF DELIVERIES AND NBU OPERATIONS.** The project is encompassed within an active well yard operated by New Braunfels Utilities (NBU) for public water supply. While NBU operations are not anticipated to impact construction activities, the Contractor will be responsible to make reasonable accommodations to allow for material deliveries and NBU operational activities within the well year.

**1.23 CONTROL OF INVASIVE, NOXIOUS PLANT MATERIALS.** The project site is located within the Headwater at the Comal facility where extensive efforts have been made to remove invasive plant species and establish native plants. The Contractor must make all reasonable attempts to prevent the introduction of non-native, invasive plant material and seeds. This shall include washing of equipment prior that has been previously utilized for excavation and soil work in other areas prior to entering the premises, securing weed-free plants and utilization of seed-free fill and soil materials.

**1.24 WORK HOURS.** In general work shall be limited to 7am to 5pm on weekdays (Mon-Fri). Permission to perform work activities beyond these hours may be granted by the Owner. Requests by the Contractor shall be submitted to the project manager/ Owner at least 48 hours prior to the request work period.

**1.25 CULTURAL RESOURCE FINDINGS.** The project is located within an area where cultural resources such as native American artifacts are commonly encountered. While cultural resource surveys have been conducted in the project area, there is a possibility that cultural remains such as arrowhead, spearheads, skeletal remains will be encountered. If any artifacts or cultural remains are encountered, the Contractor must stop work and contract the project manager/ Owner and consign the found artifact to the project manager/ Owner.

**End of Section**