



It's real.

CITY OF SEGUIN

205 N. RIVER

SEGUIN, TEXAS 78155

REQUEST FOR QUALIFICATIONS (RFQ) - No. AF-2025-46

DESIGN & BUILDOUT OF A FIVE BAY APPARATUS ENCLOSURE

**Responses Due:
April 15, 2025, by 3:00 PM**

**PUBLIC NOTICE
CITY OF SEGUIN
REQUEST FOR QUALIFICATIONS**

The City of Seguin is accepting sealed **Statement of Qualifications** for:

THE DESIGN & BUILDOUT OF A FIVE BAY APPARATUS ENCLOSURE

Sealed Statement of Qualification Proposals will be received by the City of Seguin, **electronically** through <http://www.bidnetdirect.com/texas/cityofseguin> until 3:00 P.M., Tuesday, April 19, 2025. **The City will announce all proposed consulting firms publicly** in the Council Chambers of City Hall at 3:00 P.M. on that date.

Proposals received after the time and date set for submission will be disqualified.

The City of Seguin reserves the right to reject or accept any and all proposals and to waive informalities. The City Council's decision will be final.

**STEVE PARKER
CITY MANAGER
CITY OF SEGUIN, TEXAS**



It's real.

Request for Qualifications

New Five Bay Apparatus Enclosure for Fire Department #2

To Prospective Vendors,

The City of Seguin is seeking qualifications from vendors for the design and buildout of a new 100' x 60', 5 bay apparatus enclosure at Fire Station #2 located at 650 Hwy 46 S. Seguin, Texas, 78155. The city has recently purchased two additional apparatuses for the fire department. As of now, we already have several pieces of equipment left out in the elements. This new building will serve as protection for existing equipment as well as new equipment purchased. We will also like to include a supply room, storage room, and gym.

Project Overview:

Attached to this RFQ is a scaled sketch to reference. We propose this will be a pre-engineered and insulated metal building. It shows three, 12' bays and two, 14' bays at 14' high. Within the building, we would like two insulated, air-conditioned storage rooms with decked ceilings for storage above. Also included will be a gym. Gym equipment will be provided by others. At the back of the building, we will need an 8' wide overhead door into the main area. The main area of building will not need cooling, but heat is required to keep the apparatuses above freezing temperatures during the cold season. We would like a fan in the main area to circulate air. Each apparatus will need a 30-amp plug mounted above the apparatus with a drop. Site work and flat work should be included in the proposal along with all MEP services. Our budget for this project is \$490,000 and includes all design costs, pre-construction and construction services, insurance, and bonds.

Submission:

The City of Seguin will accept submittals of qualifications for a Five Bay Apparatus Enclosure electronically through <http://www.bidnetdirect.com/texas/cityofseguin> until 3:00 P.M., Tuesday, April 19, 2025. . Any response received after closing time will not be considered.

Pre-Proposal Meetings:

Pre-proposal meetings will take place on March 27, 2025, at 10 am at Fire Station 2, located at 650 Hwy. 46 S. Seguin Texas, 78155. The purpose of the meeting is to provide an overview of the project, answer any questions, and allow bidders to familiarize themselves with the site. The meeting is recommended but not mandatory.

RFQ Guidelines:

Vendors must include the following information in their submittal.

- **Company Background and Experience:**

Provide a clear overview of your company's history, capabilities, and relevant experience, highlighting projects that align with the specific requirements of the RFQ.

- **Project-Specific Expertise:**

Emphasize your team's expertise and skills directly relevant to the project, showcasing how your team can meet the stated needs and requirements.

- **Past Performance:**

Provide evidence of successful completion of similar projects, including client testimonials, project deliverables, and timelines.

- **Certifications and Licensing:**

Clearly outline relevant certifications, licenses, and other professional credentials that demonstrate your expertise and adherence to industry standards.

- **Resource Capacity:**

Demonstrate that you have the necessary personnel, equipment, and resources to effectively manage and complete the project within the specified timeframe and budget.

- **Financial Stability:**

Depending on the nature of the RFQ and the awarding authority, you may be required to demonstrate financial stability and the ability to handle large contracts.

- **Methodology and Approach:**

Explain your proposed approach to the project, including your methodologies, processes, and strategies to ensure successful project execution.

- **Organization Structure:**

Briefly outline how your company is structured, highlighting the project team members who will be involved in the project, their roles and responsibilities, and their experience.

- **Contact Information:**

Ensure all contact information is clear, accurate, and readily available, especially email and telephone.

Selection:

The city will select the contractor that provides the best value based off qualifications and ability to stay within the specified budget. Proposers should respond clearly and completely to all requirements. Failure to respond completely may be the basis for rejecting a proposal.

Interviews may be conducted subsequent to the receipt and rating of the written proposal by the review panel. If conducted, interviews will allow the selected Proposer an opportunity to clarify their proposal. Each proposer selected to interview will be asked the same questions and scored on responses to the questions during the interview. *Interview request refusal will result in rejection of Proposer's proposal irrespective of scoring.*

Point of Contact. Clarification of Specifications and Requirements

City of Seguin issues this Request for Qualifications (RFQ) and the Purchasing Manager is the sole point of contact during the solicitation and selection process.

Ashley Bruns, Purchasing Manager ABruns@seguintexas.gov

Questions must be received via BidNet by April 4, 2025, by 3:00 p.m. local time to be included in addendum.

RFQ Timetable (some dates subject to change):

<u>Event</u>	<u>Date</u>
– RFQ Issued	03/19/2025
– All Proposer’s Questions due by	04/04/2025
– Proposer Q & A Addendum issued	07/08/2025
– SOQ Deadline	04/15/2025
– Consultant Contract Negotiation (estimate)	04/21/2025
– Contract Award (estimate)	05/6/2025

Evaluation Criteria

Proposals submitted in response to this RFQ will be evaluated based on the following criteria:

Qualifications (Maximum Points: 100)

Evaluation Criteria	Included Elements	Weighting for Evaluation of SOQ
Technical Approach	Project understanding, project approach, and innovative concepts	35
Project Planning and Management	Project staffing and resource management (who, how, and why), communication plan, and quality control procedures. Includes the prime firms past experience with sub-providers to meet program goals on this contract.	20
Project Manager’s Relevant Experience	Experience with similar or related projects including both technical and management experience	25
Key Staff Relevant Experience	Experience with similar projects	20
Total Maximum		100 Points

Right to Reject Proposal and Negotiate Contract Terms

The City reserves the right to reject any and all proposals. The City reserves the right to negotiate the terms of the contract, including reimbursement rates with the selected Consultant prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest scoring Proposer, the City may negotiate a contract with the next highest scoring Proposer and so on until an agreement is reached.

Contract

- Negotiations
 - After selection of a Consultant based on qualifications, the City will then enter into negotiations as to the terms of the contract, all aspects of services, and the compensation to be paid to the Consultant.
- Inability to Reach Agreement
 - In the event the negotiation between the most qualified Consultant(s) selected and the City cannot be completed as a result of an inability to reach agreement on the fee or services or the scope of work to be performed, then at the option of the City, the contract may be awarded to the next most qualified Consultant. Negotiations will continue in this sequence until a contract is finalized, or all responses are rejected.
- City Council Approval
 - The final contract will be submitted to the City Council for approval.
- Final Contract
 - The selected Consultant will be required to assume responsibility for all services offered in its response, whether or not such services are provided by a partnership arrangement. The successful Consultant will be considered the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
 - The successful Consultant will be required to enter into the contract with the City.
 - This RFQ and the successful Consultant's response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful Consultant.
- **Upon the award of this contract, profit (either %/actual cost) must be identified and negotiated as a separate element of the price for any contract in excess of \$50,000.**

Expenses

Covered expenses will be paid on a reimbursement basis in accordance with the RFQ.

Insurance

Prior to beginning work, the successful Consultant shall have on file with the City of Seguin a Certificate of Liability Insurance form covering worker's compensation, commercial general liability, professional liability, and business auto, listing the City as an additional insured in accordance with Exhibit A.

CITY RESPONSIBILITIES

- a) Provide guidance and coordination
- b) Provide utility record drawings
- c) Provide available archeological archive information
- d) Provide other archive information as needed and/or available
- e) Provide the most recent City of Seguin Comprehensive Plan

CONSULTANT RESPONSIBILITIES

- a) Federal and State unemployment insurance coverage
- b) Standard worker's compensation insurance coverage
- c) Compliance with all Federal and State tax laws and withholding requirements
- d) Duration of contract period provide:
 - Periodic consultation with City staff
 - Periodic review of all project materials developed
 - Project plan and schedule
 - Monthly status reports
 - Schedule project meetings with City staff (to include potential public meetings outside of normal business hours)
 - Final version of Drainage Master Plan in electronic format

CONSULTANT PERSONNEL REPLACEMENT

- Replacement of selected consultant personnel shall require the approval of the City.
- Replacement personnel shall have comparable qualifications and be provided at the contracted rate.
- Any request by the consultant to replace a team member shall be done in writing to the City.
- A resume for the proposed replacement must be submitted to the City for review.
- The City may reject the proposed replacement if qualifications and/or reference(s) of past working performance are deemed questionable or unfavorable.
 - If the City determines the selected consultant is unable to perform satisfactorily or communicate effectively, the City may, at its discretion, remove consultant immediately from the contact.
 - If the consultant is removed and the City did not initiate the request, the firm has five (5) working days to provide a replacement. There shall be no charge to the City for the first five (5) working days of the replacement.

WORK HOURS and LOCATION

- Services shall be provided during normal business hours unless otherwise approved and coordinated with the City.
- Normal business hours are Monday through Friday from 8:00 am through 5:00 pm excluding holidays.
- Consultant may be required to work on weekends, evenings, and holidays. The City will not pay an overtime rate for this service. All hours shall be billed at the hourly rate quoted.

STANDARD CONTRACT, CONDITIONS and REQUIREMENTS

The successful Proposer and the City will enter into a contract for the services described in this RFQ. Failure of the successful Proposer to accept the obligations of a contractual agreement may result in a cancellation of award.

RESTRICTIONS ON LOBBYING ACTIVITY

The City is committed to maintaining fair and open competition as required by local, state, and federal laws and statutes. Every effort is made to maintain the highest level of ethical conduct in every aspect of the procurement process. Sharp business practice or high-pressure tactics will not be tolerated. Qualification and selection of vendors is based on those vendors who share the same high standards of ethical conduct.

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

Upon issuance of the RFQ, all proponent communications and requests for clarification or objections shall be directed in writing to Ashley Bruns, Purchasing Manager, for response, determination, and dissemination to all proponents. Any communication by proponents or their representatives toward other city officers or employees regarding this RFP or the award of a contract are prohibited and will constitute grounds for disqualification of a proponent.

A lobbyist or a proponent or any of their agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the lobbyist or proponent.

ADDENDUM FORM
RFQ: AF-2025-46

Receipt is hereby acknowledged of the following Addenda to the Specifications:

ADDENDUM NO. 1 DATED _____	ADDENDUM NO. 4 DATED _____
ADDENDUM NO. 2 DATED _____	ADDENDUM NO. 5 DATED _____
ADDENDUM NO. 3 DATED _____	ADDENDUM NO. 6 DATED _____

- **The Undersigned affirms that it is duly authorized to submit this bid, that this bid has not been prepared in collusion with any other bidder, and that the content of this bid as to prices, terms, or conditions of said bid has not been communicated to any other bidder prior to the official opening of this bid.**
- **The Undersigned certifies that pursuant to Section 2270.002 of the Texas Government Code, Bidder does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation.**
- **The Undersigned certifies that pursuant to S.B 19, Bidder does not boycott energy companies and will not boycott energy companies during the term of the contract.**
- **The Undersigned certifies that pursuant to S.B. 13, Bidder does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.**

Company Name

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone No.

Date

Email Address: _____

ATTACHMENT A

(Revised 5/23/23)

INSURANCE

SECTION A. Prior to the approval of this contract by the City, CONTRACTOR shall furnish a completed Insurance Certificate to the Purchasing office. The certificate shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE IS RECEIVED BY THE CITY OF SEGUIN'S PURCHASING DEPARTMENT, and no officer or employee of the City shall have authority to waive this requirement.

INSURANCE COVERAGE REQUIRED

SECTION B. CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by CITY, based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

SECTION C. Subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to CITY, in the following type(s) and amount(s):

TYPE

AMOUNT

1. **Workers' Compensation and Employer's Liability**

Statutory

NOTE: For building or construction projects, and services provided at City-owned facilities, the successful Contractor shall meet the minimum requirements defined in the Texas Workers' Compensation Commission Rule 28 TAC §110.110 which follows this insurance attachment.

2. **Commercial General (public) Liability**
including coverage for the following:

- | | | |
|----|---|----------------------------|
| a. | Premises operations | \$1,000,000 per occurrence |
| b. | Independent contractors | \$2,000,000 aggregate |
| c. | Products/completed operations | |
| d. | Personal injury | |
| e. | Advertising injury | |
| f. | Contractual liability | |
| g. | Medical payments | |
| h. | Professional liability* | |
| i. | Underground hazard* | |
| j. | Explosion and collapse hazard* | |
| k. | Liquor liability* | |
| l. | Fire legal liability* | |
| m. | City's property in Contractor's*
care, custody, or control | |
| n. | Asbestos specific liability* | |

* **Not required for this contract**

3. **Comprehensive Automobile Liability** \$1,000,000 per occurrence
insurance, including coverage for loading
and unloading hazards, for:

- a. Owned/leased vehicles

- b. Non-owned vehicles
 - c. Hired vehicles
4. **Errors and Omissions** insurance policy (when applicable) \$1,000,000 per occurrence or claim
\$2,000,000 aggregate
for the willful or negligent acts or omissions of any no less than officers, employees or agents thereof
5. **Cyber** (when applicable) \$2,000,000

ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

CONTRACTOR agrees with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions.

- a. Name the City of Seguin and its officers, employees, and elected representatives as an Additional Insured(s), (as the interest of each insured may appear) to all applicable coverage.
- b. Provide for 30 days notice to City for cancellation, non-renewal, or material change.
- c. Provide for notice to City at the address shown below by registered mail.
- d. CONTRACTOR agrees to waive subrogation against the City of Seguin, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.
- e. Provide that all provisions of this agreement concerning liability, duty, and standard of care together shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. For coverages that are **only** available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five years which shall begin at the end of the warranty period.

NOTICES

CONTRACTOR shall notify CITY in the event of any change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following address:

Purchasing Department
City of Seguin
P.O. Box 591
Seguin, Texas 78156

SECTION D. Approval, disapproval, or failure to act by CITY regarding any insurance supplied by CONTRACTOR shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate CONTRACTOR from liability.

WORKERS COMPENSATION INSURANCE
for
Building or Construction Projects and Services Provided at City-Owned Facilities
TEXAS WORKERS' COMPENSATION COMMISSION RULE 28 § 110.110

As required by the Texas Workers' Compensation Rule 28, §110.110, the Contractor shall accept the following definitions and comply with the following provisions:

Workers' Compensation Insurance Coverage

A. Definitions:

1. Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
2. Duration of the project-includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the City of Seguin.
3. Persons providing services on the project ("subcontractor" in Section 406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the City of Seguin prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Seguin showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the City of Seguin:

1. A certificate of coverage, prior to that person beginning work on the project, so the City of Seguin will have on file certificates of coverage showing coverage for all persons providing services on the project; and
2. No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

G. The Contractor shall notify the City of Seguin in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 5. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 6. Notify the City of Seguin in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Seguin that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Seguin to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City of Seguin.

As defined by the Texas Labor Code, Chapter 269, Section 406.096(e), building or construction is defined as:

1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
2. Remodeling, extending, repairing, or demolishing a structure; or
3. Otherwise improving real property or an appurtenance to real property through similar activities.

The employment of a maintenance employee who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

**CITY OF SEGUIN
INSURANCE REQUIREMENT AFFIDAVIT**

**To be Completed By Appropriate Insurance Agent
and submitted with bid proposal.**

I, the undersigned Agent/Broker, certify that the insurance requirements contained in this bid document have been reviewed by me with the below identified Contractor. If the below identified Contractor is awarded this contract by the City of Seguin, I will be able to, within ten (10) days after being notified of such award, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

Agent (Signature)

Agent (Print)

Name of Agency/Broker: _____

Address of Agent/Broker: _____

City/State/Zip: _____

Agent/Broker Telephone #: () _____

CONTRACTOR'S NAME: _____
(Print or Type)

NOTE TO AGENT/BROKER

If this time requirement is not met, the City has the right to invalidate the bid award and award the contract to the next lowest bidder meeting specifications. Should an awarded bid be invalidated the Contractor may be liable for breach of contract. If you have any questions concerning these requirements, please contact the Purchasing Manager for the City of Seguin at (830) 401-2451

CERTIFICATE OF INTERESTED PARTIES**FORM 1295****OFFICE USE ONLY**

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is **NO** Interested Party. ☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

GENERAL CONDITIONS OF AGREEMENT

1. DEFINITION OF TERMS

- 1.01. **CONTRACT DOCUMENTS.** The Contract Documents shall consist of all documents that are a part of this bid package, as well as all documents referenced by URL or website address within this bid package. Such Contract Documents may include, but are not limited to the Notice to Contractors (Advertisement), Instructions to Bidders, Proposal, signed Agreement, Performance and Payment Bonds (when required), Special Bonds (when required), General Conditions of Agreement, Minority Business Utilization Requirements (when required), Technical Specifications, Plans, and all modifications thereof incorporated in any of the documents before the execution of the agreement.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Signed Agreement, Performance and Payment Bonds, Special Bonds (if any), Proposal, General Conditions of Agreement, General Conditions of Bidding, Notice to Contractors, Technical Specifications and Plans. All work performed by Contractor pursuant to the Contract Documents shall herein be referred to as the "WORK".

- 1.02. **SUBCONTRACTOR.** The term Subcontractor, as employed herein, includes only those having a direct contract with the CONTRACTOR and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- 1.03. **WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- 1.04. **WORK NOTICE.** The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, services, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be of a good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kinds and quality of materials. Materials or work described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.
- 1.05. **WORKING DAY.** A "Working Day" is defined as any day the weather or other conditions, not under the control of the contractor, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m. Saturdays, Sundays and legal holidays may be excluded if no work is performed.
- 1.06. **CALENDAR DAY.** "Calendar Day" is any day of the week or month, no days being excepted.
- 1.07. **SUBSTANTIALLY COMPLETED.** By the term "substantially completed" is meant that the structure has been made suitable for use or occupancy or the facility is in condition to serve its

intended purpose, but still may require minor miscellaneous work and adjustment.

2. RESPONSIBILITIES OF THE CONTRACTOR

- 2.01. **CONTRACTOR'S DUTY AND SUPERINTENDENCE.** The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements.

The CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and his property or any other persons as a result of his operations hereunder. Engineering construction drawings and specifications as well as any additional information concerning the work to be performed passing from or through the OWNER shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

The CONTRACTOR shall be responsible for all materials delivered to him for all parts of the work, including that which has been partially paid for, until final acceptance of the entire work, and shall be liable for all losses or damages thereto which may occur during the progress of construction and before final acceptance. The CONTRACTOR shall be required to make good at his own cost any loss, injury or damage which the said materials or work may sustain from any source or cause whatsoever before final acceptance thereof.

- 2.02. **CONTRACTOR'S UNDERSTANDING.** It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.
- 2.03. **CHARACTER OF WORKMEN.** The CONTRACTOR agrees to employ only orderly and competent agents, skillful in the performance of the type of work required under this contract, to do the work; and agrees that whenever the OWNER shall inform him in writing that agent(s) on

the work are, in CONTRACTOR'S opinion, incompetent, unfaithful or disorderly, such agent(s) shall be discharged from the work and shall not again be employed on the work without the Owner's written consent.

- 2.04. **CHANGES AND ALTERATIONS.** The CONTRACTOR further agrees that the OWNER may make such changes and alterations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work. If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this contract. In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall recompense the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

3. GENERAL OBLIGATIONS AND RESPONSIBILITIES

- 3.01. **RIGHT OF ENTRY.** The OWNER reserves the right to enter the property or location on which the works herein contracted for are to be constructed or installed, by such agents or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.
- 3.02. **COLLATERAL CONTRACTS.** The OWNER agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.
- 3.03. **DISCREPANCIES AND OMISSIONS.** It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate contract documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the contract, specifications or drawings, the OWNER shall define which is intended to apply to the work.
- 3.04. **EQUIPMENT, MATERIALS AND CONSTRUCTION PLANS.** The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.
- 3.05. **PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC.** The CONTRACTOR shall at all times exercise reasonable precautions for the safety of employees and other on or near the work and shall comply with all applicable provisions of federal, state and municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America except where incompatible with federal, state, or municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, ladders, bridges, gangplanks and other safety devices. The safety precautions actually taken and their adequacy shall be the sole responsibility of the CONTRACTOR, acting at his discretion as an independent contractor.

All permits for securing materials, storage space for materials, plant sites, material yards, camp sites, right to pass upon private property and all such other permits and licenses as he shall desire, or which are necessary for the proper execution of the work, must be secured by the CONTRACTOR at his expense.

- 3.06. **PERFORMANCE AND PAYMENT BONDS.** Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds, each in the sum of one hundred (100) percent of the total contract price, in standard forms for this purpose, guaranteeing faithful performance of the work and the fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the contract, and it is agreed that this Contract

shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER. Unless otherwise approved in writing by the OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States. Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the CONTRACTOR'S proposal. A Performance Bond is required for projects \$100,000 or greater and Payment Bonds are required for projects \$50,000 or greater.

- 3.07. **LOSSES FROM NATURAL CAUSES.** Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the CONTRACTOR at his own cost and expense.
- 3.08. **PROTECTION OF ADJOINING PROPERTY.** The said CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The CONTRACTOR is required to replace or repair, if necessary, any portion of pavement or structure adjoining his work which may have suffered through his operations, and all adjacent paving or other structures shall be left in a satisfactory and workmanlike condition, at least equal to that existing before the CONTRACTOR hereunder started his work. The CONTRACTOR agrees to indemnify, save and hold harmless the OWNER against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the contract.
- 3.09. **PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN AND SUPPLIERS OF MACHINERY, EQUIPMENT AND SUPPLIES.** THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived, if the CONTRACTOR fails to do so, then the OWNER may at the option of the CONTRACTOR either pay directly any unpaid bills, of which the OWNER has written notice, or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the CONTRACTOR shall be resumed in full, in accordance with the terms of this contract, in no event shall the provisions of this sentence be construed to impose any obligation upon the OWNER by either the CONTRACTOR or his surety.
- 3.10. **PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION.** The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patent or copyright by suitable legal agreement with the patentee or owner. The CONTRACTOR shall

defend all suits or claims for infringement of any patent or copyright rights and shall indemnify and save the OWNER harmless from any loss on account thereof. If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR shall be responsible for such loss unless he promptly gives such information to the OWNER.

- 3.11. LAWS AND ORDINANCE. The CONTRACTOR shall at all times observe and comply with all federal, state and local laws, ordinances and regulations which in any manner affect the contract or the work, and shall indemnify and save harmless the OWNER against any claim arising from the violation of any such laws, ordinances and regulations, whether by the CONTRACTOR or his employees. If the CONTRACTOR performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, he shall bear all costs arising there from.
- 3.12. ASSIGNMENT AND SUBLETTING. The CONTRACTOR further agrees that he will retain personal control and will give his personal attention to the fulfillment of this contract and he will not assign by Power of Attorney, or otherwise, or sublet said contract, and that no part or feature of the work will be sublet to anyone objectionable to the OWNER. The CONTRACTOR further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the CONTRACTOR from his full obligations to the OWNER, as provided by this Agreement.
- 3.13. INDEMNIFICATION. THE CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS THE OWNER FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, AND DAMAGES OF EVERY KIND, FOR INJURY TO OR DEATH OF ANY PERSON AND DAMAGES TO PROPERTY ARISING OUT OF THE CONSTRUCTION OF SAID IMPROVEMENTS OR THE OPERATIONS EMBRACED BY THIS CONTRACT AND INCLUDING ACTS OR OMISSIONS OF THE OWNER IN CONNECTION WITH SAID CONSTRUCTION.
- 3.14. CASUALTY INSURANCE. The CONTRACTOR shall, within one week after signing the contract and before any work shall start, furnish the owner with certificates of insurance satisfactory to the owner indicating the existence of the coverages noted in Attachment A.

4. PROSECUTION OF WORK

- 4.01. TIME AND ORDER OF COMPLETION. The CONTRACTOR shall commence work within ten (10) days after order to proceed and shall prosecute the work systematically and energetically so that all of his work will be completed within the contract time.
- 4.02. HINDRANCES AND DELAYS. For delays occasioned by any act, neglect or default of the OWNER, the OWNER shall not be held liable for damages on account thereof, but an extension of time shall be granted to the CONTRACTOR for the completion of this contract, equivalent to the delays so caused.
- 4.03. EXTENSION OF TIME. Additional time shall be allowed the CONTRACTOR for events of Force Majeure, as defined in this bid package. Claims for additional time shall be presented to the OWNER at the end of each month covering delays during that month. Claims not so timely presented will not be considered.

5. MEASUREMENT AND PAYMENT

- 5.01. **QUANTITIES AND MEASUREMENTS.** No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.
- 5.02. **ESTIMATED QUANTITIES.** This agreement, including the specifications, plans and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under the contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this contract, and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as 20% more than or 20% less than the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below 20% of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five (5) percent of the total contract cost, computed on the basis of the proposal quantities and the contract unit prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement.

- 5.03. **PRICE OF WORK.** In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this Contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract.

Payment for all unit priced items shall be at the applicable contract unit prices shown in the Proposal and measured in accordance with the specifications for the payment item. However, payment under a lump sum contract shall be due, only upon completion of all work contemplated by this Agreement and the acceptance of same by the OWNER, and nothing herein shall be construed as entitling the CONTRACTOR to an earlier payment, either partial or total.

The CONTRACTOR hereby agrees to receive such prices in full for furnishing all labor required for the aforesaid work, also for all expenses incurred by him, and for well and truly performing the

same and the whole thereof in the manner and according to this Agreement.

- 5.04. PARTIAL PAYMENTS. On or before the 5th day of each month, the CONTRACTOR shall prepare and submit to the OWNER for approval or modification, a statement showing as completely as practicable the total value of the work done by the CONTRACTOR and sound materials delivered on the site of the work that are to be fabricated into the work.

The OWNER shall then pay the CONTRACTOR on or before the 15th day of the current month the total amount of the approved statement less 5 percent of the amount thereof, which 5 percent shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the OWNER under the terms of this Agreement. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the CONTRACTOR, the OWNER may pay a reasonable and equitable portion of the retained percentage to the CONTRACTOR shall receive payment of the OWNER'S option, may be relieved of the obligation to fully complete the work and, thereupon, the CONTRACTOR shall receive payment of the balance due him under the contract subject only to the conditions stated under "Final Payment."

- 5.05. USE OF COMPLETED PORTIONS. The OWNER shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the CONTRACTOR shall be entitled to such extra compensation, or extension of time, or both, as the OWNER may determine.
- 5.06. FINAL COMPLETION AND ACCEPTANCE. Within ten (10) days after the CONTRACTOR has given the OWNER written notice that the work has been completed or substantially completed, the OWNER shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract Documents, OWNER shall pay to the CONTRACTOR, on or after the 30th day and before the 35th day after the date of completion, the balance due the CONTRACTOR under the terms of this Agreement, provided he has fully performed his contractual obligations under the terms of this contract; and said payment shall become due in any event upon said performance by the CONTRACTOR.
- 5.07. PARTIAL ACCEPTANCE. The OWNER may at any time request CONTRACTOR in writing to permit OWNER to beneficially occupy such part of the WORK which OWNER believes to be ready for intended use. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER OF RECORD that said part of the WORK is substantially complete and request the ENGINEER OF RECORD to issue an Acceptance Letter, for only part of the WORK. Warranties as provided under Article 5.08 on that part of the WORK beneficially occupied by OWNER will commence upon issuance of the Partial Acceptance Letter.
- 5.08. WARRANTY. During a period of twenty-four (24) months from and after the date of the Acceptance Letter or Partial Acceptance Letter, the CONTRACTOR shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgement of the OWNER shall become necessary during such period. Warranty under this section shall include any WORK performed by CONTRACTOR for the benefit of landowners along the alignment of temporary and permanent easement.

5.09. PAYMENTS WITHHELD. The OWNER may, on account of subsequently discovered evidence, withhold payment to such extent as may be necessary to protect himself from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the CONTRACTOR to make payments properly to subcontractors or for material or labor.
- (d) Damage to another contractor.
- (e) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
- (f) Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provides a Surety Bond satisfactory to the OWNER, which will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

5.10. COMPLETION OF WORK ON TIME. The Contractor agrees that time is of the essence and that the definite value of damages which would result from delay would be incapable of ascertainment and uncertain, because it is difficult to estimate the loss of potential customers, the impact on the existing utility infrastructure, and the operational impacts of delays, so that for each day of delay beyond the number of days herein agreed upon for the Substantial Completion of the Work specified in this Agreement, after due allowance for any extension of time to which the parties might agree, in writing, or which may be credited under the terms of this Contract, the City may withhold permanently from the Contractor's total compensation, not as penalty but as liquidated damages, the sum of \$ [REDACTED] per calendar day. The Parties agree that this amount is a reasonable estimate of the daily cost for the Design Engineer's project personnel, with an increase to account for the City's estimated costs rounded to the nearest hundred dollars.

Furthermore, it is agreed by the Contractor that the time period between Substantial Completion and Final Completion shall be no longer than [REDACTED] calendar days. This separate time period shall be for completion of the Punch List, as set forth herein. In the event that Contractor fails to attain Final Completion on or before the expiration of the above said time period, the Contractor shall be subject to Liquidated Damages under this Section as well as any remedies set forth in the Contract Documents. More specifically, the Contractor shall be subject to the terms set forth herein regarding Default of Contract.

In addition to exercising its rights and remedies under this Agreement, the City may also exercise any remedy that may be available to it under the law or in equity.

6. ABANDONMENT OF CONTRACT

- 6.01. ABANDONMENT BY CONTRACTOR. In case the CONTRACTOR should abandon and fail or refuse to resume work within ten (10) days after written notification from the OWNER, or if the CONTRACTOR fails to comply with the orders of the OWNER when such orders are consistent with the contract documents, then, and in that case, where performance and payment bonds exist, the Sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of abandonment, the CONTRACTOR shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the OWNER or the Surety on the performance bond, or another contractor in completion of the work; and the CONTRACTOR shall not receive any rental or credit therefor.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for within ten (10) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners:

6.01.1. The OWNER may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expenses so charged shall be deducted and paid by the OWNER out of such moneys as may be due or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and/or his Surety shall pay the amount of such excess to the OWNER; or

6.01.2. The OWNER under sealed bids, after five (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the terms and conditions which are provided in this contract. In case any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the surety shall be and remain bound therefor.

When the work shall have been substantially completed, the CONTRACTOR and his Surety shall be so notified. A complete itemized statement of the contract accounts shall then be prepared and delivered to the CONTRACTOR and his Surety and the CONTRACTOR and/or his Surety shall pay the balance due as reflected by said statement within fifteen (15) days.

When the CONTRACTOR and/or his Surety shall pay the balance shown to be due by them to the OWNER, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the CONTRACTOR and/or his Surety. Should the cost to complete the work exceed the contract price, and the CONTRACTOR and/or

his Surety fail to pay the amount due the OWNER within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the CONTRACTOR and his Surety at the respective addresses designated in this contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and his Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and his Surety. Such sale may be made at public sale, with public notice. The OWNER shall release any machinery, equipment, tools, materials or supplies which on the work, and belong to persons other than the CONTRACTOR or his Surety, to their proper owners. The books on all operations provided herein shall be open to the CONTRACTOR and his Surety.

- 6.02. ABANDONMENT BY OWNER. In case the OWNER shall fail to comply with the terms of this contract and should fail or refuse to comply with said terms within ten (10) days after written notification by the CONTRACTOR, then the CONTRACTOR may suspend or wholly abandon the work and may remove therefrom all machinery, tools and equipment and all materials on the site of work that have not been included in payments to the CONTRACTOR and have not been brought into the work. And thereupon the OWNER shall make an estimate of the total amount earned by the CONTRACTOR, which estimate shall include the value of all work actually completed by said CONTRACTOR (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair, equitable price, and a reasonable sum to cover the cost of any provisions made by the CONTRACTOR to carry the whole work to completion and which cannot be utilized.

7. SUPPLEMENTARY CONDITIONS

- 7.01. CLEAN-UP. The Contractor shall at all times keep the premises and public streets free from an accumulation of waste material or rubbish caused by his employees or work, and at the completion of the work he shall remove all his waste and excess material, rubbish and equipment so as to leave the work and the premises neat and clean and ready for the purpose for which they were intended.
- 7.02. SITE CONDITION. The Contractor shall repair or replace, if necessary, to the owners satisfaction any damage to the work site, the adjacent areas, the access areas to the work site and to any elements within these areas that may have suffered damage as a result of the contractors or any of the subcontractors operations. The contractor shall leave these areas in a satisfactory and workman like condition, at least equal to that existing before the contractor hereunder started his work.
- 7.03. AGREEMENT (ATTACHED)
- 7.04. BID BOND (ATTACHED)
- 7.05. PERFORMANCE BOND (ATTACHED)
- 7.06. PAYMENT BOND (ATTACHED)

STATE OF TEXAS §

THIS AGREEMENT, made and entered into this ____ day of ____ A.D. 20____, by and between the _____, TEXAS, a municipal corporation, of the County of _____ and State of _____, acting through _____ thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and _____ of the City of _____, County of _____, and State of _____, Party of the Second Part, hereinafter termed CONTRACTOR.

PROJECT NAME

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same by _____ days, subject to such extensions of time as are provided by the General and Specific Conditions.

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

Party of the Second Part
(CONTRACTOR)

By: _____

ATTEST:

Revised: February 13, 2025

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ Contractor, as
Principal,
and _____ as Surety,
are held and firmly bound unto City of Seguin, Texas, herein called Owner, in the
sum of \$ _____ (Figure)
_____ (Written Form)

(not less than 5 percent of the largest total amount of the bid)
for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.
WHEREAS, said Principal has submitted a Bid to said Owner to perform the Work required under the
Bidding Schedule(s) of the Owner's Contract Documents entitled:

PROJECT NAME

NOW THEREFORE, if said Principal is awarded a contract by said Owner, and, within the time, and in the
manner required in the Notice Inviting Bids and the Instructions to Bidders, enters into a written Agreement
on the form of agreement bound with said Contract Documents, furnishes the required Certificates of
Insurance, and furnishes the required Performance Bond and Payment Bond, then this obligation shall be
null and void, otherwise it shall remain in full force and effect. In the event suit is brought upon this bond
by said Owner and Owner prevails, said Surety shall pay all costs incurred by said Owner in such suit,
including a reasonable attorney's fee to be fixed by the court.

SIGNED AND SEALED, this _____ day of _____, 20_____.

(Principal) (Seal)

(Witness)

(Title)

(Surety) (Seal)

(Witness)

(Title)

Payment Bond

STATE OF _____

COUNTY OF _____

_____(Contractor name), of _____(address),
as Principal, and _____
(bond company name), as Surety, are held and firmly bound unto the City of Seguin, Texas, as Owner, in the penal sum of _____ dollars (\$ _____) for the payment of which the Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by this bond.

The Principal has entered into a Contract with the Owner dated _____ for the _____ ("Project"), which is fully incorporated into this bond by reference.

The condition of this obligation is that if the Principal pays all persons who supply public work labor or material for the Project, then this obligation will be satisfied; otherwise this bond will remain in full force and effect.

This bond is provided under the provisions of Chapter 2253 of the Texas Government Code, as amended and all liabilities on this bond shall be determined in accordance with the provisions of that statute to the same extent as if it were copied at length in this document.

The Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or the plans, specifications, drawings or other Contract Documents, or to the work performed under the Contract Documents, shall in any way affect its obligation on this bond, and the Surety waives notice of any such change, extension of time, alteration or addition.

The Surety certifies that it is authorized and admitted to write surety bonds in Texas. If this bond exceeds \$100,000.00 the surety certifies that it either 1) holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law, or 2) has obtained qualified reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas, and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. This bond is governed by Chapter 2253 of the Texas Government Code, and it is provided solely for the protection of the Owner.

Mandatory venue for any legal action filed upon this bond is in the District Courts of Guadalupe County, Texas.

Executed and sealed by the Principal and Surety on _____.

Principal Surety

By: _____ By: _____
Title: _____ Title: _____

Address: _____

(SEAL)

Address: _____

Telephone Number: _____
Facsimile Number: _____

(SEAL)

The name and address of the Resident Agent of the Surety is:

THIS BOND MUST BE ISSUED IN CONJUNCTION WITH OWNER-CONTRACTOR AGREEMENT BY BOTH PARTIES. ATTACH ORIGINAL POWER OF ATTORNEY FOR THE SURETY'S REPRESENTATIVE TO THIS BOND.

THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING 1-800-252-3439.

Performance Bond

STATE OF _____

COUNTY OF _____

We, _____ (Contractor name),
_____ (address),

as Principal, and _____
(bond company name), as Surety, are held and firmly bound unto the City of Seguin, Texas, as Owner, in
the penal sum of _____
dollars (\$ _____), for the payment of which
the Principal and Surety bind themselves and their heirs, administrators, executors, successors and
assigns, jointly and severally, by this bond:

The Principal has entered into a written Contract with the Owner dated _____ for the _____ ("Project"), which is fully incorporated into this bond by reference.

The condition of this obligation is that if the Principal faithfully and promptly performs all work for the Project in accordance with the Contract Documents, and faithfully and promptly observes and performs all of its covenants, conditions, duties and obligations under the Contract Documents according to their true intent and meaning, then this obligation will be satisfied; otherwise it will remain in full force and effect.

If the Owner declares the Principal to be in default under the Contract, the Surety agrees to either 1) promptly remedy the default, or 2) faithfully and promptly perform and complete the Project in accordance with the Contract Documents.

The Surety, for value received, agrees that no modification, change order, extension of time, amendment or addition to the Contract, or to the plans, specifications, drawings or other Contract Documents, will in any way affect the Surety's obligation on this bond, and the Surety waives notice of any such modification, change order, extension of time, amendment or addition.

The Surety certifies that it is authorized and admitted to write surety bonds in Texas. If this bond exceeds \$100,000.00 the surety certifies that it either 1) holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law, or 2) has obtained qualified reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas, and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. This bond is governed by Chapter 2253 of the Texas Government Code, and it is provided solely for the protection of the Owner.

This bond is filed with the Owner in Guadalupe County, Texas, and the Principal and Surety agree that mandatory venue for any legal action filed upon this bond is in the District Courts of Guadalupe County, Texas.

Executed and sealed by the Principal and Surety
on _____.

Principal

Surety

By: _____ By: _____

Title: _____ Title: _____

Address: _____ Address: _____

Telephone Number: _____

Facsimile Number: _____

(SEAL)

(SEAL)

The name and address of the Resident Agent of Surety is:

THIS BOND MUST BE ISSUED IN CONJUNCTION WITH OWNER-CONTRACTOR AGREEMENT BY BOTH PARTIES. ATTACH ORIGINAL POWER OF ATTORNEY FOR THE SURETY'S REPRESENTATIVE TO THIS BOND.

THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING 1-800-252-3439.

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made this the _____ day of _____ 202__, between the City of Seguin, Texas ("City"), 205 North River Street, Seguin, Texas 78155 and _____ ("Consultant"), _____ [Consultant's address] for the provision of professional services in accordance with the attached Request for Qualifications – IDIQ for Professional Services and the subsequent proffered Scope of Services, attached hereto as **Exhibit "A"** (collectively the "Project").

ARTICLE 1 CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.1 STANDARDS OF PERFORMANCE

1.1.1 The Consultant will be responsible for completing the work set forth in accepted Scope of Services and the deliverables all described in the Scope of Services. The Scope of Services shall serve as the primary document setting forth the expectations of the Parties. Work shall progress in accordance with the Completion Schedule attached to this Agreement as **"Exhibit C"**.

1.1.2 The performance of all services by the Consultant in connection with this Agreement will be by persons appropriately licensed or registered under State, local and Federal laws governing their respective consulting disciplines. In performing all services under this Agreement, the Consultant will use that degree of care and skill ordinarily exercised for similar projects by professionals who possess special expertise in the types of services involved under this Agreement.

1.1.3 No work under this Agreement will be subcontracted by the Consultant without prior written approval from the City. Any work or services subcontracted under this Agreement will be specified by separate written Agreement and will be subject to each provision of this Agreement. Persons hired by the Consultant or its subcontractors shall not be employees of or have any contractual interest with the City.

1.1.4 Any provisions in this Agreement pertaining to the City's review, approval or acceptance of written materials prepared by the Consultant or its subconsultants, contractors, and subcontractors in connection with this Agreement will not diminish the Consultant's responsibility for the services set forth herein.

1.1.5 Consultant will perform all of its services in coordination with the City. The Consultant will advise the City of data and information the Consultant needs to perform its services and the Consultant will meet with City representatives at mutually convenient times to assemble this data and information.

ARTICLE 2 THE CITY'S RESPONSIBILITIES

The City will:

2.1 Provide full information to the Consultant regarding the City's requirements for the Consultant's services under this Agreement. The City will furnish the Consultant with access to city facilities or

private property and all other data and information in the City's possession needed by the Consultant at the Consultant's request.

2.2 The City will designate the City Engineer, Melissa Reynolds, or her designee as she deems appropriate, as the City's Project Manager and authorized representative to act on the City's behalf with respect to this Agreement. Additionally, the City may designate another director as its representative to assist with access to, and collection of data from, the relevant City systems, such as utility systems. The City will examine the documents and information submitted by the Consultant and promptly render responses to the Consultant on issues requiring a decision by the City during the Project.

2.3 Provide access to and make all necessary provisions for the Consultant to enter public and private property as required for the Consultant to perform its services under this Agreement.

2.4 Bear all costs incidental to this Article.

ARTICLE 3 PAYMENTS TO THE CONSULTANT

3.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES. Payments for Basic Services will be made to Consultant monthly following receipt by City of Consultant's invoices and appropriate payment requisitions. The amounts of these invoices will be based upon the extent of work completed by the Consultant on a percentage basis within each phase of services, less any disputed amounts, pending resolution thereof. Total payment under this contract shall not exceed the amount agreed upon when Consultant accepts the Scope of Services that will be attached to this Agreement as Exhibit "A" and as set out in the Payment and Fee Schedule attached hereto as **Exhibit B.**

3.2 ADDITIONAL SERVICES. If additional services are needed, said services must be approved by the City prior to performance. If the sum of the additional services exceeds \$50,000.00 said sum must be approved by the Seguin City Council prior to undertaking the additional work.

ARTICLE 4 CONSULTANT'S RECORDS

4.1 All expense records of Consultant will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.

4.2 The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Engineer which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

4.3 The Consultant will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

ARTICLE 5 OWNERSHIP AND USE OF DOCUMENTS

5.1 All documents prepared by Consultant in connection with this Agreement will become the property of the City. City agrees such documents are not intended or represented to be suitable for reuse for another project by City or others. Any such reuse by City or those who obtained said documents from City without written verification or adaptation by the Consultant will be without liability or legal exposure to the Consultant.

5.2 The Consultant will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years except in the event that the Consultant goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

ARTICLE 6 TERM; TERMINATION OF AGREEMENT

6.1 The term of this Agreement begins on the latter of the effective date established in the first paragraph of the Agreement or on the date that the Scope of Services is accepted by the Parties; and, will end upon the Consultant's completion, and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 6.2 or 6.3 below.

6.2 This Agreement may be terminated by either party upon 30 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

6.3 This Agreement may be terminated at will by the City upon at least 30 calendar days prior written notice to the Consultant.

6.4 In the event of termination as provided in this Article, the Consultant will be compensated for all services performed to termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Consultant's delivering to the City all information and materials developed or accumulated by the Consultant in performing the services described in this Agreement, whether completed or in progress. The expense of reproduction of these items will be borne by the City.

ARTICLE 7 INSURANCE AND INDEMNITY

7.1 The Consultant will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of

patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Consultant and/or its agents and/or employees. This obligation by Consultant will not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7.2 The Consultant will procure and maintain at Consultant's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Consultant or Consultant's agents, subcontractors or employees. Before commencing the work the Consultant will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Consultant has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least 30 calendar days written notice will have been given to the City. Commercial general liability insurance and motor vehicle insurance will be written with the City of Seguin, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$1,000,000 for each occurrence and \$2,000,000.00 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than \$1,000,000 combined single limit per incident (3) professional liability coverage to cover lawful claims arising in connection with this Project in the combined single limit amount of at least \$1,000,000.00 and \$2,000,000 in the aggregate.

The stated limits of insurance required by this Paragraph are **minimum only**—they do not limit the Consultant's indemnity obligation, and it will be the Consultant's responsibility to determine what limits are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of Certificates of Insurance that do not comply with these requirements in any respect does not release the Consultant from compliance with these requirements.

7.3 Depending on the nature of the work involved the Scope of Services may require other insurance be purchased by the Consultant,

ARTICLE 8 CLAIMS AND DISPUTES

MEDIATION

8.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation at the sole option of the City as a condition precedent to the commencement of litigation. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

8.2 If the City elects to mediate, the City and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation. The Parties shall mutually agree to a mediator and the mediation shall be held at a mutually agreeable time and place. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation.

8.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

8.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the dispute may be resolved through litigation in a state court of competent jurisdiction.

ARTICLE 9

FEDERAL FUNDING REQUIRED ASSURANCES UNDER TITLE II AND VI

9.1 The Consultant will comply with the Acts and the Regulations relative to Nondiscrimination in applicable Federally assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, or other Federal agency, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

9.2 The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

9.3 In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

9.4 The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration, or other Federal Agency providing funding for this Agreement, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Recipient or the City, as appropriate, and will set forth what efforts it has made to obtain the information.

9.5 In the event of a Consultant's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding payments to the Consultant under the Agreement until the Consultant complies; and/or
- b. cancelling, terminating, or suspending an Agreement, in whole or in part.

9.6 The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 This Agreement is governed by and will be construed under the laws of the State of Texas. All obligations of both parties are performable and exclusive venue for any dispute arising under this Agreement is in Guadalupe County, Texas.

10.2 As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

10.3 The Consultant will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

10.4 The Consultant hereby affirms that Consultant and Consultant's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of Consultant to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the Seguin City Code will not be considered as a valuable gift for the purposes of this Agreement.

10.5 In performing the services required under this Agreement, the Consultant will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Consultant agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant may be regarded as a default by the Consultant of the Agreement.

10.6 All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term “will” is mandatory in this Agreement.

10.7 Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

10.8 All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

10.9 In performing all services under this Agreement, the Consultant, its subcontractors, successors and assigns will comply with all local, state and federal laws.

10.10 The City’s execution and performance under this Agreement will not act as a waiver by the City of any immunity from suit to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

10.11 The City of Seguin is governed by the Texas Public Information Act (the “Act”), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Consultant will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

10.12 The captions or headings included in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, articles, or sections of this Agreement.

10.13 In the event that the performance by either the City or the Consultant of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

10.14 In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Consultant will not waive the City’s ability to enforce the Agreement after that time.

ARTICLE 11 SUCCESSORS AND ASSIGNS

11.1 The City and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

The City and the Consultant will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

11.2 The Consultant will notify the City, in writing, of any change in its partnership/ownership within 30 calendar days of such change.

ARTICLE 12 EXTENT OF AGREEMENT

12.1 This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. In the event of a dispute between the City and Engineer regarding the intent of this Agreement, both parties agree that this Agreement will be construed in a manner consistent with the City's Request for Qualifications, the Consultant's response thereto, and the public record of the City Council's approval of this agreement as applicable. The Consultant's expenses for travel, office, production and other expenses associated directly or indirectly with this Agreement are included as part of the total fee. Except as to a change in the scope of services, the compensation for which does not exceed \$50,000.00, this Agreement may be amended only by separate written instrument approved by the City's governing body and signed by both the City and the Consultant.

12.2 Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

12.3 In the event of any conflict between the Agreement and the provisions of any exhibit or attachment to this Agreement, such provision shall be construed in the following order of precedence: (1) The Request for Qualifications – IDIQ for Professional Services; (2) this Agreement; (3) Scope of Services; and (4) additional specific contractual documents. In the case of an irreconcilable conflict as to scope of services the more specific provision shall prevail over the more general provision.

ARTICLE 13 NOTICES

13.1 Notices required under this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:

Steve Parker
City Manager
205 N. River Street
Seguin, Texas 78155
sparker@seguintexas.gov

To the Consultant:

Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement.

City of Seguin

Steve Parker, City Manager