THIS AGREEMENT is entered into the day of , 20 , by and between the NEW BRAUNFELS ECONOMIC DEVELOPMENT CORPORATION, hereinafter referred to as the NBEDC and THINKSMART PLANNING, INC., hereinafter referred to as "CONSULTANT".

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

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

NOW, THEREFORE, all parties agree as follows:

I. GENERAL

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

II. SERVICES

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

(See Exhibit A – Scope of Services)

- B. CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.
- C. Neither the NBEDC'S review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver if any rights under this Agreement or if any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to the NBEDC in accordance with applicable law for all damages to the NBEDC caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.
 - D. The rights and remedies of the NBEDC under this Agreement are as provided by law.

III. PAYMENT

The parties agree that CONSULTANT shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment

Professional Services Agreement

Schedule attached hereto and incorporated herein as Exhibit "B". The contract amount specified shall not exceed \$122,500. The contract amount specified in Exhibit "B" shall not be exceeded without written permission of the NBEDC.

IV. TIME FOR PERFORMANCE

- A. CONSULTANT agrees to commence work immediately upon execution of this Agreement and to proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT, to completion as described in the Completion Schedule, attached hereto as Exhibit "C" and hereby made a part of this Agreement.
- B. In the event CONSULTANT'S performance of this Agreement is delayed or interfered with by acts of the NBEDC or others, CONSULTANT may request an extension of time for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays unless such delays exceed 90 days.
- C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to the CONSULTANT, unless CONSULTANT shall have made written request upon the NBEDC for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless the NBEDC and CONSULTANT have agreed in writing upon the allowance of additional time to be made.

V. DOCUMENTS

- A. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer files, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of the NBEDC. All instruments of service shall be professionally sealed as may be required by law or by the NBEDC.
- B. Such documents of service, together with necessary supporting documents, shall be delivered to the NBEDC, and the NBEDC shall have unlimited rights, for the benefit of the NBEDC, in all instruments of service, including the right to use same on any other work of NBEDC without additional cost to the NBEDC. If, in the event the NBEDC uses such instruments of service on any work of the NBEDC other than that specified in the Scope of Services, attached as Exhibit "A", provided CONSULTANT completes this Agreement, under those circumstances the NBEDC hereby agrees to protect, defend, indemnify and hold harmless the CONSULTANT, their officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of service with respect to such other work except where CONSULTANT participates in such other work.
- C. CONSULTANT agrees to and does hereby grant to the NBEDC a royalty-free license to all such instruments of service which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. CONSULTANT, upon request, agrees to furnish the originals of all such instruments including electronic design files of service to the NBEDC.

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

VI. TERMINATION

- A. The NBEDC or the CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the CONSULTANT. In the event suspension or termination is without cause, payment to the CONSULTANT, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by the NBEDC to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to the NBEDC.
- B. Should the NBEDC require a modification of its contract with CONSULTANT, and in the event NBEDC and CONSULTANT fail to agree upon a modification to this Agreement, the NBEDC or the CONSULTANT shall have the option of terminating this Agreement. Payment to CONSULTANT shall be made by the NBEDC in accordance with the terms of this Agreement, for the services mutually agreed upon by the NBEDC and the CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

VII. INSURANCE

- A. CONSULTANT shall provide and maintain Workers Compensation with statutory limits.
- B. CONSULTANT shall provide and maintain in full force and effect during the time of this Agreement, auto insurance (including, but not limited to, insurance covering the operation of owned and non-owned automobiles, trucks and other vehicles) protecting CONSULTANT and the NBEDC as an additional Insured with limits not less than \$1,000,000 for Bodily Injury/Property Damage (Combined Single Limit, Each Incident) and \$5,000 for Personal Injury Protection (PIP).
- C. CONSULTANT shall provide general Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The general Liability Insurance must name the NBEDC as an additional Insured.
- D. CONSULTANT shall also provide and maintain Professional Liability Errors and Omissions Insurance coverage to protect CONSULTANT and the NBEDC from liability arising out of the performance of professional services, if any, under this Agreement. Such coverage shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Such insurance shall be kept in effect for four years after the completion of the contract. If CONSULTANT fails to maintain the insurance covered during that time, the NBEDC may pay the premiums to keep the insurance in effect and recover the cost from the CONSULTANT.
- E. A signed Certificate of Insurance, satisfactory to NBEDC, showing compliance with the requirements of this Article shall be furnished to the NBEDC before any services are performed. Such Certificate shall provide 30 days written notice to the NBEDC prior to the cancellation or modification of any insurance referred to therein and continue to issue such certificate for four years after completion of the contract.

VIII. INDEMNIFICATION FOR INJURY AND PERFORMANCE

CONSULTANT further specifically obligates itself to the NBEDC in the following respects, to-wit:

- A. The CONSULTANT hereby agrees to protect, indemnify and hold harmless the NBEDC, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of the CONSULTANT, its officers, employees, servants, agents or subcontractors, or anyone else under the CONSULTANT'S, direction and control, and arising out of, resulting from, or caused by the negligent performance or failure of performance of any work or services called for by this Agreement, or from conditions created by the negligent performance or non-performance of said work or services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, the CONSULTANT shall be obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.
- B. The CONSULTANT is not responsible for the actions of the NBEDC'S contractor to perform the construction of the improvements covered under this Agreement.
- C. Acceptance and approval of the final plans by the NBEDC shall not constitute nor be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the NBEDC for any defect in the designs, working drawings and specifications, or other documents prepared by CONSULTANT, its employees, contractor, agents and consultants.

IX. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

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

X. INDEMNIFICATION FOR PERFORMANCE

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

XI. ASSIGNMENT

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

XII. APPLICABLE LAWS

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

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

XIII. <u>DEFAULT OF CONSULTANT</u>

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

- A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by the NBEDC to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by the NBEDC at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, the NBEDC may proceed to complete the services in any manner deemed proper by NBEDC, either by the use of its own forces or by resubmitting to others. In either event, the CONSULTANT shall be liable for all costs in excess of the total contract price under this Agreement incurred to complete the services herein provided for and the costs so incurred may be deducted and paid by the owner out of such monies as may be due or that may thereafter become due to CONSULTANT under and by virtue of this Agreement.
- B. The NBEDC may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of the CONSULTANT.

XIV. ADJUSTMENTS IN SERVICES

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

XV. EXECUTION BECOMES EFFECTIVE

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

XVI. AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

XVII. GENDER AND NUMBER

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

XVIII. COMPLETE CONTRACT

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

XIX. NOTICES AND AUTHORITY

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

BY: TITLE:

ADDRESS: THINKSMART PLANNING, INC.

1511 W. Kent Dr. Chandler, AZ 85224

(Signatures on Following Page)

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

OWNER NEW BRAUNFELS	CONSULTANT
ECONOMIC DEVELOPMENT CORPORATION	THINKSMART PLANNING, INC.
BY:Kathy Meurin	BY:
TITLE: CHAIR	TITLE:
ADDRESS: c/o 550 Landa Street New Braunfels, TX 78130	ADDRESS: 1511 W. Kent Dr. Chandler, AZ 85224

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Rev. 2/12/21/FO/BC

EXHIBIT A

Scope of Services





May 27, 2022

Jeff Jewell
Director of Economic and Community Development
City Administration
550 Landa St
New Braunfels, TX 78130

Re: Request for Proposal - Comal County Jr Livestock Show Association & Comal County Fair Association Master Plan for Joint Facilities

Jeff,

ThinkSMART Planning, Inc. (TS) is pleased to provide the following proposal to the City of New Braunfels for the development of a Master Plan for Joint Facilities for Comal County Jr Livestock Show Association, Comal County Fair Association, and the City of New Braunfels based on the following scope of services:

Scope of Services

In order to accomplish this Master Plan Process, TS will:

- Conduct <u>Meeting #1</u> with primary stakeholders Comal County Jr Livestock Show Association & Comal County Fair Association to:
 - Explain the process and roles of stakeholders and other participants;
 - Identify secondary stakeholders;
 - Develop the schedule and next steps for the project.
- Review information and research applicable to the development of the project including other representative work and guidelines;
- Review curricula developed by New Braunfels ISD, and Comal ISD for Career and Technical Education/Agriculture coursework and facility needs;
- Conduct Meetings #2-#3 (full day) or #2-#5 (half day). Organize and conduct all planning meetings including at least two full day or four half day large group planning sessions with representative stakeholders to gather pertinent master planning information, and work as a group to prioritize goals, objectives, needs and concepts;
- Meet with individual stakeholder group representatives to further define needs for the project;
- Produce a Master Plan document that includes the following:
 - Detailed scope for the project going forward;
 - Goals and objectives of the project;
 - Space planning for new and/or renovated facilities;
 - Relationship diagrams and/or matrices for functions;
 - Design Team produced conceptual designs, optional 3D renderings and site plans;
 - Design Team produced preliminary budget information (note: our team will provide a proposal from a professional cost estimator if this level cost estimate is desired);

- Identification of potential funding sources for the project;
- Conceptual timeline/schedule indicating the time required for the completion of the work.

ThinkSMART Planning, Inc. will be the prime consultant performing the work described herein; TS will incorporate the assistance of the City staff to assist in any charette and to assist in presenting information and updates to the City and/or Economic Development Corporation. Priefert Complex Designs will assist with the conceptual site and building designs, and preliminary (planning level) cost estimate. Additionally, HMT Engineering and Surveying will provide a civil survey and Phase I Environmental Assessment if so desired by client.

Compensation

Compensation for above described services shall be billed on a monthly basis as work progresses and includes reimbursable expenses. Please refer to the attached proposal by Priefert Complex Designs and HMT Engineering and Surveying for a full description of team members' proposals and scope. The following is a breakdown of compensation by team member:

Team Member	Lump Sum Fee
ThinkSMART Planning, Inc.	\$54,250.00
Priefert Complex Designs	\$26,500.00
Project Renderings Priefert (3D Realistic)	\$12,500.00
Total Fees	\$93,250.00

Optional Services	Lump Sum Fee
HMT - Civil Engineering & Environmental Site Assessment Ph I	\$29,950.00
Total Optional Services	\$29,250.00

Schedule

TS realizes that time is of the essence and is able to start promptly upon the acceptance of this contract by the city. Estimated completion for the project is approximately 180 days after the start of the planning process and dependent upon stakeholder availability for meetings/reviews.

We look forward to working with the City of New Braunfels in this exciting project. Please don't hesitate to contact me if you need further information.

Molly Smith, AJCP, REFP

thinkSMART Planning, Inc.

thinkSMART Planning, Inc. bright ideas for space

1511 W Kent Dr Chandler, AZ 85224 602.819.1629 molly@thinksmartplan.com Accepted:

Authorized Representative City of New Braunfels, TX



P.O. Box 1540 Mt. Pleasant, TX 75456-1540 903/572-1741 FAX 903/572-3191

May 27, 2022

Ms. Molly Smith thinkSMART planning, inc.

SENT VIA email: molly@thinksmartplan.com
RE: Master planning services

Dear Ms. Smith,

Thank you for the opportunity to offer this proposal for providing master planning services at the Comal County Fairgrounds. We understand the importance of reliable information in the decision-making process for projects like this and we are confident our experience will provide meaningful and necessary guidance as the project progresses.

Priefert Complex Designs (PCD) was established to assist Owners with the design and layout of their facilities and to address the unique requirements of buildings dedicated to multi-functional, fair, agricultural, rodeo and equestrian uses. Our staff consists of engineering, architectural, drafting and project management expertise to see a project through, from beginning to end.

Based on our previous discussions, I believe we can provide a package of information which will be invaluable in illustrating the fair's vision to city and county decision-makers, stakeholders, community leaders and investors.

THE PROJECT

We understand the project to include master planning of future buildings, upgrades and public spaces to the approximately 35-acre site. We understand that future buildings may include a multi-purpose fair building and arena building. Planned upgrades to the site may include public gathering areas and improved parking areas. All planning will need to consider the safe and efficient interaction between visitors and livestock, fair activities and multi-functional uses.

SCOPE OF SERVICES

Stakeholder meetings:

M. Smith May 27, 2022 Page 2 of 4

PCD will attend stakeholder meetings over a one-week period. In this step, we will participate and document question / answer sessions with the groups or individuals and provide a summary of responses. The input received from these sessions will be used to develop preliminary design solutions and presented to Comal County officials for review and discussion.

These preliminary solutions will present different schemes and locations of new facilities, parking areas, public areas and access for visitors, competitors, and livestock throughout the site.

Site planning will begin with locating constraints such as utilities and easements.

Area / adjacency site diagrams will be presented for input regarding site planning and operations. Preliminary floor plans will initially be presented in hand-sketch form to obtain input from the client regarding building areas, uses and layout.

Exterior material images will be presented to obtain feedback regarding building style and finish preferences.

This material will be provided to the client and stakeholders in report form and presented remotely using Microsoft Teams.

Design Phase:

During the Design Phase, the Design Team will combine input from the Stakeholder Input and Design Charette to further develop the master plan. The master plan will include conceptual-level floor plans, building elevations, material schemes and a site plan. Drafts of these will be presented for input and comment at approximately 30% completion and 75% completion.

Final Submittal and Presentation:

Input received during the 75% review presentation will be used to complete the conceptual design plans and renderings. The renderings will be superimposed on actual site photographs to produce realistic images of the proposed project.

The project budget and design narrative will be drafted. (The project budget will be developed by Project Cost Resources, LLC and will be a rough order of magnitude concept-level opinion of probable costs. Final budgets may vary, based on final design scope and requirements, construction market variations and inflation.)

Narratives will be written to describe the design intent of the project.

A final presentation document will be produced and presented in hard-copy and digital format for thinkSmart's inclusion into the final report to Comal County.

A final in-person presentation of the study will be provided to discuss the design and "next steps" for the execution of the project.

DELIVERABLES

- 1. Schematic plans of up to two (2) buildings: Livestock Barn / Arena and Indoor / Covered Arena.
- 2. Rendered conceptual site plan indicating new buildings, new bleacher systems, livestock holding pens, main arena, existing buildings, public spaces and parking areas.
- 3. Up to three (3) photo realistic renderings
- 4. Conceptual level project budget
- 5. Project narrative describing the scope of the project including description of building systems of the new facilities, planned upgrades to existing assets, site planning and landscaping upgrades to public spaces.

FEE

The fees for these professional services is as follows:

Priefert Complex Designs	\$35,500
Project Cost Resources	\$3,500

Total \$37,000

Expenses will be billed at cost and are anticipated to be approximately \$1,500 (one thousand five hundred dollars). The fee will be invoiced as follows:

25% at completion of Stakeholder Input and Design Charette

35% at completion of Design Phase Review

40% at completion of Final Submittal and Presentation.

Payments are due within 30 days of receipt of invoices.

If your group elects to use Priefert Complex Designs to complete the design for bidding and construction, the drawings and preliminary designs can seamlessly be transitioned into construction documents.

If you agree with the scope of work and the associated terms, please indicate your acceptance of this proposal by signing in the space provided and returning one signed copy to Priefert Complex Designs at the address shown on this correspondence, by email

M. Smith May 27, 2022 Page 4 of 4

to <u>gcalvert@priefet.com</u>. If you have any questions regarding this proposal, please feel free to contact me at (903) 572-1741 ext. 238. Again, thank you for the opportunity to assist.

Sincerely,

Glen M. Calvert, P.E. General Manager

Authorized Signature thinkSmart Planning